

NOTE

This **Digest of Utilities Cases** is published by the **Washington Utilities and Transportation Commission**. It is offered as an aid to legal research. Each entry summarizes a principle that the Commission applied to an issue and cites to the decision containing the discussion and application of the principle.

This 1995 edition completely replaces previous publications. It incorporates the entries from the 1990 Digest and the February 1994 Utilities Supplement, includes new entries for older orders (1986, 1987, and 1988 orders), and includes entries for 1994 orders.

This edition does not include the tables from the 1990 edition that cross-referenced chapter 34.05 RCW with former chapter 34.04 RCW and chapter 480-09 WAC with former chapter 480-08 WAC. The detailed headings in this edition, combined with the Index cross references, should make those tables unnecessary. If you have found the 1990 cross reference tables to be of value, you should retain them.

Cross references in the body of the digest are not intended to be exhaustive. Rather, they are intended to guide the user to sections where additional headnotes concerning the subject appear. The user should refer to the Index for further cross references.

Comments, corrections, and requests for copies may be addressed to the Secretary of the Commission, 1300 S. Evergreen Park Drive S.W., PO BOX 47250, Olympia, Washington 98504-7250.

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The Commission, which the Governor has designated as the state's lead agency having principal responsibility for the preparation of this state's Commercial and Apartment Conservation Service (CACS) Program in accordance with the National Energy Conservation Policy Act of 1978, may cancel the State's proposed CACS program after the United State Congress repeals the federal CACS program. RCW 80.01.040; National Energy Conservation Policy Act of 1978. In re Commercial and Apartment Conservation Service (CACS) Program, Docket No. U-84-26, Second Supplemental Order (July 1987).

The Commission, which the Governor has designated as the lead agency principally responsible for the preparation and submission of this state's Residential Conservation Service (RCS) Plan in accordance with the National Energy Conservation Policy Act of 1978, may amend the RCS Program it has previously adopted when the Federal Department of Energy requires amendments. RCW 80.01.040; National Energy Conservation Policy Act of 1978. In re Residential Conservation Service (RCS) Program, Docket No. U-80-31, Third Supplemental Order (July 1987).

NATIONAL ENERGY POLICY ACT OF 1992

The standards set out in section 712 of the National Energy Policy Act of 1992 (EPAct) relating to exempt wholesale generators (EWGs) are not appropriate to carry out the purposes of the Public Utility Regulatory Policies Act of 1978 (PURPA). In re Commission Investigation of Implementation of Standards Pursuant to Section 712 of the National Energy Policy Act of 1992, Docket No. UE-930573, Second Supplemental Order (October 1993).

PUBLIC UTILITIES REGULATORY POLICIES ACT OF 1978 (PURPA)

The standards set out in section 712 of the National Energy Policy Act of 1992 (EPAct) relating to exempt wholesale generators (EWGs) are not appropriate to carry out the purposes of the Public Utility Regulatory Policies Act of 1978 (PURPA). In re Commission Investigation of Implementation of Standards Pursuant to Section 712 of the National Energy Policy Act of 1992, Docket No. UE-930573, Second Supplemental Order (October 1993).

The Commission has statutory authority to require the submission and approval of contracts related to cogeneration or small power production facilities of one megawatt or more, prior to the validation of such contracts. Former WAC 480-105-005; PURPA. WUTC v. Puget Sound Power & Light

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Co., Docket No. U-85-87, Fourth Supplemental Order (March 1986).

WASHINGTON CONSTITUTION

Appellate decision. Even if RCW 80.36.230 were ambiguous regarding whether the Commission may grant monopolies or exclusive rights to a telecommunications company in a territory, the state constitution makes it inappropriate to impute to RCW 80.36.230 a conferral of authority on the Commission to grant monopolies. Const. art. 12, §§ 19 and 22; RCW 80.36.230. In re Electric Lightwave, Inc. [In re Consolidated Cases], 123 Wash.2d 530, 869 P.2d 1045 (1994), reversing In re Electric Lightwave, Inc., Docket No. UT-901029, Third Supplemental Order (December 1991) and In re Digital Direct Of Seattle, Inc., Docket Nos. UT-910776 & UT-910777, Fourth Supplemental Order (April 1992).

Appellate decision. Given the constitutional protection of the right of all companies to provide telecommunications services and the constitutional proclamation against monopolies, the Legislature must expressly grant to the Commission the authority to grant monopolies before the Commission may exercise such rights. Const. art. 12, §§ 19 and 22; RCW 80.36.230. In re Electric Lightwave, Inc. [In re Consolidated Cases], 123 Wash.2d 530, 869 P.2d 1045 (1994), reversing In re Electric Lightwave, Inc., Docket No. UT-901029, Third Supplemental Order (December 1991) and In re Digital Direct Of Seattle, Inc., Docket Nos. UT-910776 & UT-910777, Fourth Supplemental Order (April 1992).

PROCEDURE -- ASHBACKER DOCTRINE

(Ashbacker Radio Corp. v. FCC, 326 US 327, 66 S.Ct. 148, 90 L.Ed. 108 (1945))

Pursuant to Ashbacker Radio Corporation v. Federal Communications Commission, 326 U.S. 327 (1945), the Commission will compare all timely applications for monopoly telephone service. Even if comparative consideration of competing applications were not constitutionally required, the Commission believes that the public interest is best served by a review of all viable applicants and an award to the applicant best meeting public needs. Ashbacker Doctrine. In re Inter Island Telephone Co., Inc., Docket No. U-86-132, Sixth Supplemental Order (February 1987).

ESTOPPEL

The application of the doctrine of equitable estoppel against the state is not favored, and will be applied against the government only when it is necessary to prevent a manifest injustice and when the exercise of governmental powers are not thereby impaired. Estoppel. WUTC v. U S WEST Communications, Docket No. U-89-3245-P, Order Denying Motion to Dismiss Complaint (August 1992).

The Commission's failure to resolve an affiliated interest issue when it had an opportunity to do so does not necessarily estop it from later filing a complaint that would require an affiliated interest adjustment. Estoppel; Chapter 80.16 RCW; RCW 80.04.310; WAC 480-120-036. WUTC v. U S WEST Communications, Docket No. U-89-3245-P, Order Denying Motion to Dismiss Complaint (August 1992).

To apply the doctrine of equitable estoppel in the context of the Commission's ongoing obligation to regulate public service companies is impermissible because it clearly would encroach upon governmental sovereignty and interfere with the discharge of governmental duties. Estoppel. WUTC v. Whidbey Telephone Co., Docket No. U-85-50; In re Telephone Service to the Point Roberts Area, Docket No. U-86-51; and In re Hallicrafters Equipment Company (Canada), Docket No. U-86-30; Second Supplemental Order (June 1986).

In that the doctrine of equitable estoppel requires more than silent acquiescence by governmental authority, the doctrine is inapplicable when the Commission or its predecessor agency has done nothing to encourage a party to undertake an unlawful action. Estoppel. WUTC v. Whidbey Telephone Co., Docket No. U-85-50; In re Telephone Service to the Point Roberts Area, Docket No. U-86-51; and In re Hallicrafters Equipment Company (Canada), Docket No. U-86-30; Second Supplemental Order (June 1986).

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CHAPTER 19.86 RCW

**UNFAIR BUSINESS PRACTICES--
CONSUMER PROTECTION**

Although a small water company is not subject to regulation by the Commission, it remains subject to the Consumer Protection Act, Chapter 19.86 RCW. Chapter 19.86 RCW; RCW 80.04.010. WUTC v. Eldorado Hills Utility, Inc., Docket No. U-85-55, Second Supplemental Order (March 1986).

FORMER CHAPTER 34.04 RCW

ADMINISTRATIVE PROCEDURE ACT

(Superseded July 1, 1989, by Chapter 34.05 RCW)*

Former RCW 34.04.090 Contested cases--Notice--Hearing--Informal Disposition-- Record--Findings of fact--Agency's powers.

A Notice of Hearing that cites to chapter 80.04 RCW gives the parties sufficient notice that the proceeding may include the valuation of rate base. Former RCW 34.04.090; RCW 80.04.250. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S West Communications, Docket No. U-89-2698-F, First Supplemental Order (September 1989).

An amended Notice of Hearing may be issued to cure possible confusion in an original Notice of Hearing. Former RCW 34.04.090. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S West Communications, Docket No. U-89-2698-F, First Supplemental Order (September 1989).

The Commission may accept a proposed stipulated settlement that is consistent with the public interest. Former RCW 34.04.090; Former WAC 480-08-160. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-88-2188-T, Second Supplemental Order (March 1989).

The Commission must confine its decisions in contested cases to the evidence in the proceeding and it will not consider references in briefs or other documents to material that is not on the record or otherwise proper to consider. Former RCW 34.04.090; Former RCW 34.04.100. Rose Monroe v. Puget Sound Power & Light Co., Docket No. U-85-70, Order Affirming Proposed Order (October 1986).

Former RCW 34.04.100 Contested cases--Rules of Evidence--Cross Examination.

Cross References

- Reconsideration: See also Former RCW 34.04.090; Former WAC 480-08-250.
- Review of Initial Orders: See Former WAC 480-08-240.
- Voluntary Settlement: See Former WAC 480-08-110.
- **See Index for references to current procedural rules.**

The Commission must confine its decisions in contested cases to the evidence in the proceeding and it will not consider references in briefs or other documents to material that is not on the record or otherwise proper to consider. Former RCW 34.04.090; Former RCW 34.04.100. Rose Monroe v. Puget Sound Power & Light Co., Docket No. U-85-70, Order Affirming Proposed Order (October 1986).

* See Index for references to current procedural statutes and rules.

Former Chapter 34.04 RCW

Former RCW 34.04.110 Contested cases--Procedure when deciding officials have not heard or read evidence.

Procedural rulings may be announced orally on the record or in writing. Generally, although matters such as scheduling may be announced by letter after notice requirements are satisfied, the written announcement of a ruling generally is called an order. If the ruling is one made by an administrative law judge at the conclusion of the hearing, and resolves the contested issues subject to Commission review, it is an "initial order" (formerly "proposed order"). Former RCW 34.04.110; RCW 34.12.060. In re GTE Northwest, Inc., Docket No. U-88-1719-F, Order Declining Jurisdiction (May 1988).

The Commission will accept findings of fact if they are supported by the evidence. Former RCW 34.04.110. WUTC v. Whidbey Telephone Co., Docket No. U-86-105; In re Inter-Island Telephone Co., Inc., Docket No. U-86-132; In re Point Roberts Telecommunications, Inc., Docket No. U-86-134 (Consolidated), Order Denying Exceptions (June 1987).

Former RCW 34.04.115 Consultation by agency officer as to issues.

A motion that seeks information not related to the case at hand will be denied. Disclosure must be limited to information regarding the pending docket. Former RCW 34.04.115; Former WAC 480-08-260. In re Pacific Northwest Bell Telephone Co., Docket No. U-88-2052-P, Second Supplemental Order (January 1989).

CHAPTER 34.05 RCW

ADMINISTRATIVE PROCEDURE ACT

RCW 34.05.060 Informal settlements.

Cross References

- Settlement in adjudicatory proceedings: See WAC 480-09-465.
- **See Index for references to prior procedural rules.**

RCW 34.05.240 Declaratory order by agency--Petition--Court review.

The Commission will not entertain a petition for a declaratory order if the result could prejudice a person's rights within the meaning of RCW 34.05.240(7), unless the person first consents in writing to the determination of the matter by a declaratory order proceeding. The burden is on the petitioner party to obtain the necessary consent. RCW 34.05.240; WAC 480-09-230. In re Petition of Partnership for Equitable Rates for Commercial Customers, Docket No. UG-940326 (March 1994).

It is not necessary that the petitioner for a declaratory order be an entity regulated by the Commission; it is only necessary that the petitioner be an interested person. RCW 34.05.240; WAC 480-09-230. In re Tanner Electric Company, Docket No. UE-901596, Declaratory Order (March 1991); recon. denied, First Supplemental Order (April 1991).

The Commission may convert a declaratory proceeding into a classification proceeding, by dismissing the former and ordering the latter, when the classification proceeding is the most expeditious means of addressing the issues raised by the parties and is a more appropriate vehicle for resolving factual disputes than the declaratory ruling process. RCW 34.05.240; RCW 80.04.015; RCW 80.36.350. In re U.S. Metrolink, Corp., Docket No. U-87-1684-P, Second Supplemental Order (August 1988).

RCW 34.05.416 Decision not to conduct an adjudication.

The Commission may decide not to conduct an adjudicative proceeding in response to an application to the agency when the application or pleading is defective in numerous regards and asks relief beyond the Commission's jurisdiction to grant. RCW 34.05.416; WAC 480-09-400. Richard L. Pope, Jr. v. GTE Northwest Incorporated, Docket No. UT-930244 (July 1993).

RCW 34.05.419 Agency action on applications for adjudication.

The Commission may dismiss a complaint that does not identify dates or specific actions that are alleged to be in violation of Commission rules governing the respondent when the complainant fails to amend the complaint or to argue its sufficiency when so invited by the Commission. RCW 34.05.419; 80.04.110; WAC 480-09-420(5). Michele R. Ross and Charles Woodson v. U S WEST Communications, Docket No. UT-910722, Order of Dismissal (August 1991).

In order to avoid the parties' and the agency's needless outlay of time and resources, the Commission will not set for hearing a complaint that fails to meet the minimum standard. RCW 34.05.419; 80.04.110. SOS David Peter and David Peter, M.T.L. v. U.S. West Communications, Docket No. UT-900612, First Supplemental Order (October 1990).

RCW 34.05.440 Default.

The Commission may dismiss a complaint for failure to prosecute if the complainant fails to submit a status report by the deadline set by the Commission. RCW 34.05.440. Grimm v. Dorland and Iliad, Inc., Docket No. U-89-3243-F, Order Denying Review; Dismissing Complaint (April 1991).

When a complainant establishes good cause for failure to appear at the originally-scheduled hearing, the Commission may vacate the dismissal order and reinstate the complaint. RCW 34.05.440; WAC 480-09-700. Bhatnagar v. U S West Communications Docket No. UT-900603, Decision and Order Vacating Order of Dismissal (December 1990).

RCW 34.05.443 Intervention

That an entity may have participated as an intervenor in a prior case does not entitle it to intervenor status in a subsequent proceeding. The Commission may weigh the pros and cons of participation in each proceeding. RCW 34.05.443; WAC 480-09-430. WUTC v. Washington Natural Gas Company, Docket No. UG-940814, Third Supplemental Order (August 1994).

That an entity may have presented expert testimony for an intervenor in a prior case has no bearing on whether it is entitled to party status in a later proceeding. RCW 34.05.443; WAC 480-09-430. WUTC v. Washington Natural Gas Company, Docket No. UG-940814, Third Supplemental Order (August 1994).

The interests of a private marketer of services related to gas use are not within those that the Commission is required to consider. RCW 34.05.443; WAC 480-09-430. WUTC v. Washington Natural Gas Company, Docket No. UG-940814, Third Supplemental Order (August 1994).

The Commission generally will not allow a person to intervene in a proceeding when the person does not have a substantial interest in the proceeding and has not show that its participation would

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be in the public interest. RCW 34.05.443; WAC 480-09-430. In re The Washington Water Power Company, Docket Nos. UE-941053, UE-941054, Fourth Supplemental Order (December 1994).

RCW 34.05.449 Procedure at hearing.

Cross References

- WAC 480-09-736 -- hearing guidelines
- WAC 480-09-750 -- rules of evidence
- **See Index for references to prior procedural rules.**

A presiding officer, when conducting a hearing under the authorization of RCW 34.05.449(1), is not required to submit a written motion prior to acting on its own motion. It is sufficient that the presiding officer explain the reasons for a ruling and, when appropriate, offer the opportunity for interlocutory review. WUTC v. International Pacific, Inc., Docket No. UT-911482, Sixth Supplemental Order (November 1993).

The appearance of a party's witness on behalf of another entity in the public testimony proceedings is ill-advised and strongly discouraged, and the Commission may strike the witness' testimony. RCW 34.05.449; WAC 480-09-750. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-921262, UE-920499, & UE-920433, Eighth Supplemental Order (July 1993).

A utility that does not distribute to other parties its updated background material and work papers in time for the parties to present evidence on a major issue, fails to follow acceptable procedure. Information available early in the case should not be hoarded for presentation at rebuttal. RCW 34.05.449; Former WAC 480-08-180. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

It is unacceptable for a utility to limit other parties' opportunity to examine a proposal by waiting until rebuttal to present its alternative rate design plan. The Commission expects the company to present its proposals in its direct case. RCW 34.05.449; RCW 80.28.020; Former WAC 480-08-180. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

Hearings should remain open to the public unless specific and substantial cause is shown for closure. RCW 34.05.449; Former WAC 480-08-015. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C, U-88-2127-C, Third Supplemental Order (January 1989).

A party must show substantial need for confidentiality before a hearing will be closed to the public or a transcript or portion thereof will be sealed. RCW 34.05.449; RCW 80.04.095; Former WAC 480-08-015. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C, U-88-2127-C, Third Supplemental Order (January 1989).

RCW 34.05.452 Rules of evidence--Cross-examination.

The Commission routinely admits responses to questions asked "subject to check" unless a party,

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other than the one providing the response, makes a timely well-grounded objection. RCW 34.05.452; WAC 480-09-750. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Twentieth Supplemental Order [Prudence] (December 1994).

RCW 34.05.452 (cont.)

It is improper to take official notice of testimony in a prior case when offered for the truth of the testimony. RCW 34.05.452; WAC 480-09-750. Washington STS, Ltd. v. U S WEST Communications, Inc., Docket No. UT-921213, Second Supplemental Order (June 1993).

The Commission will give no consideration to evidentiary material submitted after the hearing record has closed. RCW 34.05.452; WAC 480-09-745. In re GTE Northwest, Inc., Docket No. U-89-3031-P, Second Supplemental Order (July 1990).

RCW 34.05.464 Review of initial orders.

Cross References

- Review of initial orders: See also WAC 480-09-780.

The term credibility is not applicable to expert testimony in the same way it is to lay testimony of the occurrence of an event. An expert witness' true belief in the validity of a theory does not make the theory valid, and viewing the witness' demeanor does not make a decider better able to judge whether the witness' theory explains observed phenomena. RCW 34.05.464; WAC 480-09-780. In re Paytel Northwest, Inc., Docket No. UT-920632, Fourth Supplemental Order as corrected by Fifth Supplemental Order (October 1993).

RCW 34.05.470 Reconsideration.

Cross References

- Reconsideration of Commission order: See WAC 480-09-810.

CHAPTER 34.12 RCW

OFFICE OF ADMINISTRATIVE HEARINGS

Procedural rulings may be announced orally on the record or in writing. Generally, although matters such as scheduling may be announced by letter after notice requirements are satisfied, the written announcement of a ruling generally is called an order. If the ruling is one made by an administrative law judge at the conclusion of the hearing, and resolves the contested issues subject to Commission review, it is an "initial order" (formerly "proposed order"). Former RCW 34.04.110; RCW 34.12.060. In re GTE Northwest, Inc., Docket No. U-88-1719-F, Order Declining Jurisdiction (May 1988).

Chapter 34.05 RCW

The Commission has authority to conduct, and to govern the course of, hearings. When it does not personally sit, it has authority to request appointment of an administrative law judge to preside. RCW 34.12.040; RCW 80.01.050; RCW 80.01.060. In re GTE Northwest, Inc., Docket No. U-88-1719-F, Order Declining Jurisdiction (May 1988).

CHAPTER 80.01 RCW

UTILITIES AND TRANSPORTATION COMMISSION

RCW 80.01.030 Commission to employ secretary and other assistants--Secretary's duties--Deputies.

A person may be a technical adviser to both the presiding administrative law judge at the proposed order stage and to the Commission in the same proceeding. The Commission has discretion as to whom it employs as assistants and advisers. Its employees have no personal or financial interest in the outcome of proceedings. Former WAC 480-08-240; RCW 80.01.030. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

RCW 80.01.040 General powers and duties of commission.

Cross References

- ▶ Rate setting by Commission: See RCW 80.28.020 (gas/electric/water).
- ▶ Rate setting by Commission: See RCW 80.36.140 (telecommunications).
- ▶ Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.
- ▶ Commission's control over expenditures: See RCW 80.04.300 -.310.
- ▶ Burden on utility to show rates are just, fair, reasonable: See RCW 80.04.130.
- ▶ Commission shall adopt policies to encourage cogeneration, conservation, and production from renewables: See RCW 80.28.025.

The Commission may deny a petition for a notice of inquiry to consider the intrastate impact of impending changes in interstate rates if rules or Commission policies that may be needed to deal with the impending changes can be developed in the context of a tariff filing. RCW 80.01.040; 80.36.140. In re Interexchange Access Coalition, Docket No. UT-931029 (October 1993).

The Commission may waive the requirements of a Commission rule when it is not technically feasible for a company to provide service in the manner previously presented to and approved by the Commission. RCW 80.01.040; 80.36.140. In re U S WEST Communications, Inc., Docket No. UT-920018 (September 1992).

A facility that cannot be used for any purpose other than for telecommunications services is subject to Commission regulation; dark fiber is such a facility. RCW 80.01.040(3). In re Electric Lightwave, Inc., Docket No. UT-901029, Clarifying Order (March 1992).

Chapter 80.08 RCW does not require Commission approval of an "equity infusion," into a regulated utility by its sole shareholder and parent corporation if the "equity infusion" does not constitute the issuance of stock by the company, is not an "issued" evidence of ownership, and does not constitute a debt owed to the parent by the company. However, pursuant to RCW 80.01.040 and 80.04.070, the Commission may require the company to file information about equity infusions. RCW 80.01.040; 80.04.070; Chapter 80.08 RCW. In re U S WEST Communications, Inc., Docket No. UT-911077, Declaratory Order and Order Requiring Filing of Information (January 1992).

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RCW 80.01.040 (cont.)

In developing a framework for setting the rates, terms and conditions by which a specific company provides utility services, the Commission may proceed on a case by case basis or may develop principles and guidelines in a rulemaking proceeding. RCW 80.01.040; 80.36.140. WUTC v. U S WEST Communications, Docket No. UT-901006, Second Supplemental Order (August 1991).

The Commission has no jurisdiction to determine whether oral representations made to a telecommunications service reseller by an interexchange company constitute an enforceable contract. RCW 80.01.040; 80.36.140. Metro-Net Services Corp. v. U.S. West Communications, Docket No. U-88-2417-F, Third Supplemental Order (May 1990).

Agencies of government are not at liberty to disregard statutes without explicit or implicit authority to do so. The Commission cannot, under the guise of administrative discretion, refrain from regulating a company that meets the statutory definition of a telecommunications company. RCW 80.01.040. In re U. S. Metrolink Corp., Docket No. U-88-2370-J, Second Supplemental Order (May 1989).

The Commission cannot resolve an alleged trademark, trade name, or copyright infringement because these matters are not violations of the laws or regulations that the Commission has jurisdiction to enforce. RCW 80.01.040. Metro-Net Services Corp. v. U.S. West Communications, Docket No. U-88-2417-F, First Supplemental Order (January 1989).

The Commission, which the Governor has designated as the state's lead agency having principal responsibility for the preparation of this state's Commercial and Apartment Conservation Service (CACS) Program in accordance with the National Energy Conservation Policy Act of 1978, may cancel the State's proposed CACS program after the United State Congress repeals the federal CACS program. RCW 80.01.040; National Energy Conservation Policy Act of 1978. In re Commercial and Apartment Conservation Service (CACS) Program, Docket No. U-84-26, Second Supplemental Order (July 1987).

The Commission, which the Governor has designated as the lead agency principally responsible for the preparation and submission of this state's Residential Conservation Service (RCS) Plan in accordance with the National Energy Conservation Policy Act of 1978, may amend the RCS Program it has previously adopted when the Federal Department of Energy requires amendments. RCW 80.01.040; National Energy Conservation Policy Act of 1978. In re Residential Conservation Service (RCS) Program, Docket No. U-80-31, Third Supplemental Order (July 1987).

The Commission will deny a party's motion for lack of jurisdiction when an adequate record has not been developed for the Commission to make a dispositive ruling on the jurisdictional issue and the moving party has not gone beyond mere allegations and has failed to sustain its burden of clearly establishing lack of jurisdiction. RCW 80.01.040. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a AMNET, Docket No. U-86-43, Fifth Supplemental Order (April 1987).

RCW 80.01.040 (cont.)

The Commission may direct a public service company with reduced access costs resulting from tax rate reductions under the Federal Tax Reform Act of 1986 to file a report identifying the projected impact of these tax rate reductions on company operations. RCW 80.01.040; RCW 80.36.140. In re Requirement ... to Report ... Impact of Revisions of the Federal Tax Code, Docket No. U-86-130, First Supplemental Order (April 1987), corrected, Second Supplemental Order (April 1987).

Pursuant to its continuing jurisdiction to monitor the financial and operational condition of utilities subject to regulation so as to ensure reliable, safe and efficient service at the lowest possible cost, the Commission may initiate an investigation of the effects of the Federal Tax Reform Act of 1986 upon electric, gas and Class A telephone and water companies. RCW 80.01.040. In re Requirement ... to Report ... Impact of Revisions of the Federal Tax Code, Docket No. U-86-130, First Supplemental Order (April 1987), corrected, Second Supplemental Order (April 1987).

The Commission's discretion is not circumscribed by an Administrative Law Judge's proposed order. Its responsibility to exercise informed judgment and to represent the public interest may not be delegated to an Administrative Law Judge. RCW 80.01.040. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Nineteenth Supplemental Order [Clarification Order] (January 1987).

A telecommunications company is not excused from filing with the Commission simply because it has already filed in a foreign country tariffs with and is regulated by authorities in a foreign nation. RCW 80.01.040; RCW 80.36.100. WUTC v. Whidbey Telephone Co., Docket No. U-85-50; In re Telephone Service to the Point Roberts Area, Docket No. U-86-51; and In re Hallicrafters Equipment Company (Canada), Docket No. U-86-30; Second Supplemental Order (June 1986).

The Commission does not recognize a "social compact" theory of utility regulation that would allow or require the grant of a monopoly franchise to a company that has unlawfully provided service in a territory, as such a theory would render much of the Commission's statutory jurisdiction a nullity. RCW 80.01.040; RCW 80.36.230. WUTC v. Whidbey Telephone Co., Docket No. U-85-50; In re Telephone Service to the Point Roberts Area, Docket No. U-86-51; and In re Hallicrafters Equipment Company (Canada), Docket No. U-86-30; Second Supplemental Order (June 1986); underpinning assumptions reversed, In re Electric Lightwave, Inc., 123 Wash.2d 530, 869 P.2d 1045 (1994).

Because the Commission may exercise its powers only within the jurisdiction granted by the Legislature, which has defined "water company" in RCW 80.04.010 to exclude small water companies, the Commission has no authority to regulate small water companies. RCW 80.01.040; RCW 80.04.010; RCW 80.04.130. WUTC v. Eldorado Hills Utility, Inc., Docket No. U-85-55, Second Supplemental Order (March 1986).

Chapter 80.01 RCW

RCW 80.01.050 Quorum--Hearings--Actions deemed those of the commission.

The Commission has authority to conduct, and to govern the course of, hearings. When it does not personally sit, it has authority to request appointment of an administrative law judge to preside. RCW 34.12.040; RCW 80.01.050; RCW 80.01.060. In re GTE Northwest, Inc., Docket No. U-88-1719-F, Order Declining Jurisdiction (May 1988).

RCW 80.01.060 Administrative law judges--Powers--Designated persons for emergency adjudications.

The Commission has authority to conduct, and to govern the course of, hearings. When it does not personally sit, it has authority to request appointment of an administrative law judge to preside. RCW 34.12.040; RCW 80.01.050; RCW 80.01.060. In re GTE Northwest, Inc., Docket No. U-88-1719-F, Order Declining Jurisdiction (May 1988).

CHAPTER 80.04 RCW

REGULATIONS--GENERAL

RCW 80.04.010 Definitions.

A company that uses local exchange lines to provide interexchange telecommunications services to paying members of the general public through an arrangement with an affiliate is not a private shared telecommunications services provider as defined in RCW 80.04.010, and thus is not exempt from regulation pursuant to RCW 80.36.370. Washington STS, Ltd. v. U S WEST Communications, Inc., Docket No. UT-921213, Second Supplemental Order (June 1993).

The leasing of telecommunications facilities (in this case, dark fiber) to a subsidiary telecommunications company by a corporate parent, when the parent does not hold out the provision of such facilities to the general public, does not by itself make the corporate parent subject to regulation under chapter 80.36 RCW. RCW 80.04.010; 80.36.140. In re Digital Direct Of Seattle, Inc., Docket Nos. UT-910776 & UT-910777, Fourth Supplemental Order (April 1992).

Any corporation that holds itself out to the public to inter-connect access lines provided by local exchange companies is a telecommunications company, unless it falls within the class of identified service providers that are exempt from Commission regulation. RCW 80.04.010; RCW 80.36.370. In re U. S. Metrolink Corp., Docket No. U-88-2370-J, Second Supplemental Order (May 1989).

RCW 80.04.130, which establishes the Commission's authority to suspend the rates of a water company that was removed from and later returned to Commission jurisdiction and to allow temporary rates, applies to a company that was subject to Commission jurisdiction during a previous period because it met minimum jurisdictional amounts set forth in RCW 80.04.010, but was not regulated by the Commission because it failed to file a tariff with the Commission during that period. RCW 80.04.010; RCW 80.04.130; RCW 80.28.050. WUTC v. G & W Aqua, Inc., Docket No. U-87-1089, Order Affirming Proposed Order Granting Motion to Suspend (September 1988).

Pursuant to RCW 80.04.130, the Commission may suspend the initial tariff filing of a water company that was removed from and later returned to Commission jurisdiction because of a change in the minimum jurisdictional amounts set out in RCW 80.04.010. The Commission may allow temporary rates that shall not exceed the rates charged when the company was last regulated or last subject to regulation, unless good cause is shown for a different level. RCW 80.04.010; RCW 80.04.130. WUTC v. G & W Aqua, Inc., Docket No. U-87-1089, Order Affirming Proposed Order Granting Motion to Suspend (September 1988).

A private shared telecommunications service (STS) provider does not fall within the definition of a "telecommunications company" under RCW 80.04.010, because its services are not offered to the general public. RCW 80.04.010; RCW 80.36.370. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-33, First Supplemental Order (January 1987).

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RCW 80.04.010 (cont.)

A water company with less than 100 customers or annual revenues of less than \$300 is not a "water company" subject to regulation by the Commission. RCW 80.04.010. WUTC v. Eldorado Hills Utility, Inc., Docket No. U-85-55, Second Supplemental Order (March 1986).

When a water company, which was removed from Commission jurisdiction because of a change in the jurisdictional provisions of RCW 80.04.010, goes back under the jurisdiction of the Commission, the company must charge the last tariff approved by the Commission. RCW 80.04.010; RCW 80.04.130. WUTC v. Eldorado Hills Utility, Inc., Docket No. U-85-55, Second Supplemental Order (March 1986).

Because the Commission may exercise its powers only within the jurisdiction granted by the Legislature, which has defined "water company" in RCW 80.04.010 to exclude small water companies, the Commission has no authority to regulate small water companies. RCW 80.01.040; RCW 80.04.010; RCW 80.04.130. WUTC v. Eldorado Hills Utility, Inc., Docket No. U-85-55, Second Supplemental Order (March 1986).

Although a small water company is not subject to regulation by the Commission, it remains subject to the Consumer Protection Act, Chapter 19.86 RCW. Chapter 19.86 RCW; RCW 80.04.010. WUTC v. Eldorado Hills Utility, Inc., Docket No. U-85-55, Second Supplemental Order (March 1986).

RCW 80.04.015 **Conduct of business subject to regulation--Determination by Commission.**

The Commission may convert a declaratory proceeding into a classification proceeding, by dismissing the former and ordering the latter, when the classification proceeding is the most expeditious means of addressing the issues raised by the parties and is a more appropriate vehicle for resolving factual disputes than the declaratory ruling process. RCW 34.05.240; RCW 80.04.015; RCW 80.36.350. In re U.S. Metrolink, Corp., Docket No. U-87-1684-P, Second Supplemental Order (August 1988).

RCW 80.04.070 **Inspection of books, papers and documents.**

Chapter 80.08 RCW does not require Commission approval of an "equity infusion," into a regulated utility by its sole shareholder and parent corporation if the "equity infusion" does not constitute the issuance of stock by the company, is not an "issued" evidence of ownership, and does not constitute a debt owed to the parent by the company. However, pursuant to RCW 80.01.040 and 80.04.070, the Commission may require the company to file information about equity infusions. Chapter 80.08 RCW. In re U S WEST Communications, Inc., Docket No. UT-911077, Declaratory Order and Order Requiring Filing of Information (January 1992).

RCW 80.04.095 Protection of records containing commercial information.

A protective order is appropriate when proprietary and confidential information will likely be provided in a proceeding under circumstances that create a significant risk of disclosing truly confidential material. RCW 80.04.095; Former WAC 480-08-015. WUTC v. GTE Northwest, Inc., Docket Nos. U-88-2438-T, U-88-2443-T, Third Supplemental Order (February 1989).

A party must show substantial need for confidentiality before a hearing will be closed to the public or a transcript or portion thereof will be sealed. RCW 34.05.449; RCW 80.04.095; Former WAC 480-08-015. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C, U-88-2127-C, Third Supplemental Order (January 1989).

RCW 80.04.110 Complaints--Hearings--Water systems not meeting board of health standards.

RCW 80.04.110 permits a complaint by a county alone against a telephone company's rules and regulations. The county need not secure an additional 24 signature in support of its complaint to comply with jurisdictional requirements. RCW 80.04.110. Pierce County v. U S WEST Communications, Inc., Docket No. UT-920225, Order Denying Motion to Dismiss Complaint (April 1992).

The Commission may dismiss a complaint that does not identify dates or specific actions that are alleged to be in violation of Commission rules governing the respondent when the complainant fails to amend the complaint or to argue its sufficiency when so invited by the Commission. RCW 34.05.419; 80.04.110; WAC 480-09-420(5). Michele R. Ross and Charles Woodson v. U S WEST Communications, Docket No. UT-910722, Order of Dismissal (August 1991).

In order to avoid the parties' and the agency's needless outlay of time and resources, the Commission will not set for hearing a complaint that fails to meet the minimum standard. RCW 34.05.419; 80.04.110. SOS David Peter and David Peter, M.T.L. v. U.S. West Communications, Docket No. UT-900612, First Supplemental Order (October 1990).

The Commission will dismiss a formal complaint in the absence of minimal compliance with Commission procedural rules. RCW 80.04.110; WAC 480-09-420. SOS David Peter and David Peter, M.T.L. v. U.S. West Communications, Docket No. UT-900612, Order Dismissing Complaint (August 1990).

The Commission may dismiss a complaint that alleges almost no specific facts, that does not specify the occurrence of any act that violates any specific rule or ask for relief from a specific violation, because it fails to meet the minimum procedural requirement. The public interest requires that the Commission dismiss a complaint that fails to specify violations of the law or the rules. Proceeding with a greatly defective complaint, in the absence of a clear indication that there is underlying substance, imposes unnecessary costs on the parties, the Commission, and the public. RCW

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80.04.110; WAC 480-09-420. SOS David Peter and David Peter, M.T.L. v. U.S. West Communications, Docket No. UT-900612, Order Dismissing Complaint (August 1990).

RCW 80.04.110 (cont.)

Agencies of government are not at liberty to disregard statutes without explicit or implicit authority to do so. The Commission cannot, under the guise of administrative discretion, refrain from regulating a company that meets the statutory definition of a telecommunications company. RCW 80.01.040; 80.04.110. In re U. S. Metrolink Corp., Docket No. U-88-2370-J, Second Supplemental Order (May 1989).

In a billing dispute, failure of the local dominant toll carrier for intraLATA traffic to provide a correct and timely local calling area report to an interexchange carrier does not excuse the interexchange carrier's failure to make payments to the dominant carrier; withholding of payment violates the requirement under RCW 80.36.130 that the full tariff be billed and paid for services rendered. RCW 80.04.110; RCW 80.36.130; WAC 480-120-101. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a Amnet, Docket No. U-86-43, Seventh Supplemental Order (March 1988).

The Commission will dismiss, after hearing, a customer's complaint alleging overbilling by a utility when the evidence shows that the customer's allegations are incorrect and that the utility's calculation of charges owed is correct. RCW 80.04.110; RCW 80.36.080; WAC 480-120-106. Abode Realty v. Telephone Utilities of Washington, Docket No. U-86-116, Order Affirming Proposed Order and Dismissing Complaint (December 1987).

The Commission is required to hold a hearing upon the filing of a formal complaint and has no discretion to decline jurisdiction. RCW 80.04.110; RCW 80.04.120. Abode Realty v. Telephone Utilities of Washington, Docket No. U-86-116, Order Affirming Proposed Order and Dismissing Complaint (December 1987).

The Commission is not authorized by law to impose sanctions for abuse of process. RCW 80.04.110; RCW 80.04.387. Abode Realty v. Telephone Utilities of Washington, Docket No. U-86-116, Order Affirming Proposed Order and Dismissing Complaint (December 1987).

The Commission's complaint procedures are available to customers injured by a competitive telecommunications company. Competitive telecommunications companies are also subject to the Consumer Protection Act. RCW 80.04.110; RCW 80.36.360. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. U-86-113, Fourth Supplemental Order (June 1987).

A complainant's lack of corporate status at the time it filed a complaint is not grounds for dismissal if the procedural defect was cured prior to the time of hearing. RCW 80.04.110. Spokane Energy, Inc. v. Washington Water Power Co., Docket No. U-86-114, Order Granting Exceptions and Dismissing Complaint (April 1987).

The Commission will dismiss the complaint of a qualifying facility (QF) alleging failure by a utility

to execute an agreement with the QF to purchase power from the QF when the QF has not submitted a sufficiently mature proposal that would demand an affirmative response by the utility. RCW 80.04.110; Former WAC 480-105-040. Spokane Energy, Inc. v. Washington Water Power Co., Docket No. U-86-114, Order Granting Exceptions and Dismissing Complaint (April 1987).

RCW 80.04.110 (cont.)

The purpose of requiring specificity in a complaint is to advise the parties of the issues to be presented. RCW 80.04.110; Former WAC 480-08-050. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a AMNET, Docket No. U-86-43, Fifth Supplemental Order (April 1987).

The Commission disfavors a narrow "code pleading" approach in a complaint proceeding. RCW 80.04.110; Former WAC 480-08-050. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a AMNET, Docket No. U-86-43, Fifth Supplemental Order (April 1987).

A notice of the time and place for holding an additional hearing session upon matters specified in the initial hearing notice is not deficient for failure to cite the statutory basis for the hearing. RCW 80.04.110. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-82-19, Sixth Supplemental Order (September 1986).

The Commission may consider issues related to the refund of amounts collected under a conditional requirement of refund during Commission compliance with a since-dissolved federal injunction enjoining implementation of rates ordered in a final Commission order, without waiting until after a hearing on the company's petition for rehearing in the principal case, when the remaining issues in the principal case are few and number and may be independently considered. RCW 80.04.110; 80.04.200; 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-82-19, Sixth Supplemental Order (September 1986).

RCW 80.04.120 Hearings, order, record.

The Commission is required to hold a hearing upon the filing of a formal complaint and has no discretion to decline jurisdiction. RCW 80.04.110; RCW 80.04.120. Abode Realty v. Telephone Utilities of Washington, Docket No. U-86-116, Order Affirming Proposed Order and Dismissing Complaint (December 1987).

The Commission condemns bickering and lack of cooperation among attorneys representing parties in a proceeding; personality conflicts and legal gamesmanship can inhibit the pursuit of a just result. A party who submits a written argument that includes everything but the Gettysburg Address and the Magna Carta as support for its position places its own credibility in question. RCW 80.04.120. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-52, Fifth Supplemental Order (May 1986).

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RCW 80.04.130 Suspension of tariff change--Mandatory measured telecommunications service--Washington telephone assistance program service.

Cross References

- Rate setting by Commission: See RCW 80.28.020 (gas/electric/water).
- Rate setting by Commission: See RCW 80.36.140 (telecommunications).
- Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.

The requirement for contemporaneous documentation of the prudence of a resource acquisition is a necessary and logical adjunct to the statute placing the burden of proof on an electric company in a ratemaking proceeding. RCW 80.04.130; 80.28.020 (prudence). WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Twentieth Supplemental Order [Prudence] (December 1994).

The Commission has jurisdiction to entertain a petition for interim rate relief pending the outcome of a general rate increase request. RCW 80.04.130. WUTC v. Alderton-McMillin Water Supply, Inc., Docket No. UW-911041, First Supplemental Order Denying Interim Rates (June 1992).

In considering a water company's request for emergency interim rate relief, the Commission will consider all salient factors, including the safety and adequacy of the service the company provides, and whether the company has ignored its public service requirements or violated the public trust. RCW 80.04.130. WUTC v. Alderton-McMillin Water Supply, Inc., Docket No. UW-911041, First Supplemental Order Denying Interim Rates (June 1992).

A public interest standard applies to requests for interim rate relief. RCW 80.01.040; 80.04.130. WUTC v. Alderton-McMillin Water Supply, Inc., Docket No. UW-911041, First Supplemental Order Denying Interim Rates (June 1992).

The Commission will reject a water company surcharge request when the company fails to demonstrate that the surcharge is just and reasonable. RCW 80.04.130(2); 80.28.020; 80.28.022. WUTC v. Alderton-McMillin Water Supply, Inc., Docket Nos. UW-910563 & UW-911474, Order Rejecting Surcharge and Securities Filing (April 1992).

When a water company has provided inadequate and insufficient water service to its customers for a number of years, has been largely inaccessible and unresponsive to its customers, and has not taken reasonable and adequate steps to remedy a multitude of problems with its system, it has not carried its burden of demonstrating that a proposed surcharge that would result in increased rates is just, reasonable, and in the public interest. RCW 80.04.130(2); 80.28.020; 80.28.022. WUTC

v. Alderton-McMillin Water Supply, Inc., Docket Nos. UW-910563 & UW-911474, Order Rejecting Surcharge and Securities Filing (April 1992).

Proposed tariff changes that are not sufficiently supported will be rejected. RCW 80.04.130(2); 80.28.020. WUTC v. Washington Natural Gas Company, Docket No. UG-900210, Second Supplemental Order (January 1991).

RCW 80.04.130 (cont.)

When a water company's regulatory history shows a course of management that has ignored its public service responsibilities and disregarded the interests of its customers, the company has not carried its burden of demonstrating that proposed increases would result in rates that are fair, just, reasonable and sufficient. RCW 80.04.130; RCW 80.28.020. WUTC v. Pacific Beach Water, Inc., Docket No. U-89-2953-T, First Supplemental Order (April 1990).

Parties in rate cases are expected to provide backup numbers and information sufficient to allow the Commission to calculate whether a proposed adjustment is acceptable. An informal survey for which the company cannot identify the persons contacted, state what questions were asked or provide notes of the conversations, nor describe how the responses were used, is not persuasive. RCW 80.04.130; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Fifth Supplemental Order (March 1990).

A rate is retroactive and illegal when applied to a service without prior notice and review. However, the "true-up" portion of an energy cost adjustment clause (ECAC) is not retroactive rate-making, because it involves a rate that is to be applied only prospectively to services later rendered, and only after hearing. RCW 80.04.130; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-81-41 (Reopened), Sixth Supplemental Order (December 1988).

The Commission will deny a petition for interim rate relief when the Commission is not convinced that an actual emergency exists or that, without affirmative relief, the financial integrity and ability of the company to continue its operations will be compromised. WAC 480-09-760. WUTC v. Richardson Water Co., Docket No. U-88-2294-T, Second Supplemental Order (November 1988).

When a community's local calling area is divided by several separate exchanges, each having its own calling privileges, the Commission may order that a new exchange with Extended Area Service (EAS) be established in the area with rates equivalent to those currently in effect, plus an EAS service charge, so that area subscribers will be able to call each other without paying a toll charge. RCW 80.04.130; WAC 480-120-415. WUTC v. General Telephone Co. of the Northwest, Docket No. U-87-1603-T, Second Supplemental Order (November 1988).

Pursuant to RCW 80.04.130, the Commission may suspend the initial tariff filing of a water company that was removed from and later returned to Commission jurisdiction because of a change in the minimum jurisdictional amounts set out in RCW 80.04.010. The Commission may allow temporary rates that shall not exceed the rates charged when the company was last regulated or last

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subject to regulation, unless good cause is shown for a different level. RCW 80.040.010; RCW 80.04.130. WUTC v. G & W Aqua, Inc., Docket No. U-87-1089, Order Affirming Proposed Order Granting Motion to Suspend (September 1988).

RCW 80.04.130 (cont.)

In determining whether to allow different rates on an interim basis, the Commission has traditionally required some emergency that would substantially affect the company. However, RCW 80.04.130, which allows the Commission to establish temporary rates after suspending the initial tariff filing of a water company removed from and later returned to Commission jurisdiction because of a change in minimum jurisdictional amounts, sets out a "good cause" standard for establishing interim rates that vary from the last authorized rates. RCW 80.04.130. WUTC v. G & W Aqua, Inc., Docket No. U-87-1089, Order Affirming Proposed Order Granting Motion to Suspend (September 1988).

RCW 80.04.130, which establishes the Commission's authority to suspend the rates of a water company that was removed from and later returned to Commission jurisdiction and to allow temporary rates, applies to a company that was subject to Commission jurisdiction during a previous period because it met minimum jurisdictional amounts set forth in RCW 80.04.010, but was not regulated by the Commission because it failed to file a tariff with the Commission during that period. RCW 80.04.010; RCW 80.04.130; RCW 80.28.050. WUTC v. G & W Aqua, Inc., Docket No. U-87-1089, Order Affirming Proposed Order Granting Motion to Suspend (September 1988).

RCW 80.04.130, which provides authority to the Commission to suspend the rates of a water company that was removed from and later returned to Commission jurisdiction and to allow temporary rates, does not set a prior tariff as a ceiling for temporary rates, but rather the prior rates. Even if a prior rate was not an authorized tariff rate, the Commission may use the prior rate as a means of establishing an authorized temporary rate under RCW 80.04.130. WUTC v. G & W Aqua, Inc., Docket No. U-87-1089, Order Affirming Proposed Order Granting Motion to Suspend (September 1988).

The Commission will reject a utility's proposed tariff revisions that would allow high volume high-load factor customers to shift from transportation under a full margin rate to a rate based only on distribution costs when the utility has not met its burden of proving that the rate is fair, just, and reasonable as filed. RCW 80.04.130. WUTC v. Washington Water Power Co., Docket No. U-87-1532-T, Second Supplemental Order (September 1988).

A public service company seeking a rate change has the burden of proof to establish the

reasonableness of the proposed rate change, even when the change involves a rate decrease. RCW 80.04.130. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-87-1083-T, Seventh Supplemental Order (July 1988).

The Commission will deny a proposed rate increase if the company fails to meet its burden of proof to establish that the proposed increase is just, fair, reasonable and sufficient. RCW 80.04.130. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Order Denying Reconsideration (July 1988).

RCW 80.04.130 (cont.)

Even though a telephone company's proposed tariff revisions, here volume discounts denominated "Prime Saver," involve a rate decrease rather than a rate increase, the company still has the burden of proof to demonstrate that the proposed rates are just, fair and reasonable. RCW 80.04.130. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-87-1083-T, Fifth Supplemental Order (May 1988).

In a rate proceeding, a water company has the burden of showing that its expenses are just and reasonable. RCW 80.04.130. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

A water company has the burden to substantiate its figures for rate-making purposes. RCW 80.04.130. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

The Commission will deny a water utility's filing for an interim rate increase when the Commission finds the company has not demonstrated that an actual emergency exists or that interim rate relief is necessary to prevent gross hardship or gross inequity. RCW 80.04.130. WUTC v. South Bainbridge Water System, Inc., Docket No. U-87-1355-T et al., Second Supplemental Order (April 1988).

When a telecommunications provider files tariff revisions designed to change rates and charges for telephone service rendered by the provider, the burden of proof to show the reasonableness of the filings is upon the provider. RCW 80.04.130. WUTC v. General Telephone Co. of the Northwest, Inc., Docket No. U-87-1630-T et al., Order of Consolidation (March 1988).

In a rate proceeding, a water company has the burden of showing that its expenses are just and reasonable. RCW 80.04.130. WUTC v. Crosswoods Water Co., Inc., Docket No. U-87-650-T, Third Supplemental Order (January 1988).

The Commission may grant a continuance of hearings beyond the original suspension date applicable to a tariff filing if it finds that all parties have agreed to extension of the applicable suspension

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period, that the respondent utility has specifically waived the enforcement of the provisions of RCW 80.04.130, and that the agreement is reasonable and in the public interest. RCW 80.04.130. WUTC v. Pacific Northwest Bell Telephone Co., Docket Nos. U-87-796-T & U-87-799-T, Second Supplemental Order (October 1987).

Interim relief is an extraordinary remedy that should be granted only when an actual emergency exists, or when the relief is necessary to prevent gross hardship or gross inequity. RCW 80.04.130. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-87-1083-T, Second Supplemental Order (August 1987).

RCW 80.04.130 (cont.)

The burden of proving that a proposed rate increase is just and reasonable is placed upon any public service company proposing the increase. RCW 80.04.130. In re Pacific Northwest Bell Telephone Co., Docket Nos. U-86-34, U-86-35, U-86-36, & U-86-86; WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-90, Fourth Supplemental Order (April 1987).

The Commission may allow temporary rates during a suspension period, subject to retroactive adjustment. RCW 80.04.130. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Thirtieth Supplemental Order (March 1987).

As a general rule, a health insurance premium paid as an employee benefit is a proper expense for utility rate-making. However, when the employee is an officer or employee of more than one business, the company must justify the allocation of cost to the regulated utility. RCW 80.04.130; RCW 80.28.020. WUTC v. Pacific Beach Water, Inc., Docket No. U-86-57, Order on Review (February 1987).

In a rate proceeding, a water company has the burden of proof to establish that its proposed rates and charges are fair, just and reasonable. RCW 80.04.130; RCW 80.28.020. WUTC v. Pacific Beach Water, Inc., Docket No. U-86-57, Order on Review (February 1987).

A utility has the burden of proof to demonstrate that consumer survey expenses are legitimately charged to ratepayers. RCW 80.04.130; RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

When a water company, which was removed from Commission jurisdiction because of a change in the jurisdictional provisions of RCW 80.04.010, goes back under the jurisdiction of the Commission, the company must charge the last tariff approved by the Commission. RCW 80.04.010; RCW 80.04.130. WUTC v. Eldorado Hills Utility, Inc., Docket No. U-85-55, Second Supplemental Order (March 1986).

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Because the Commission may exercise its powers only within the jurisdiction granted by the Legislature, which has defined "water company" in RCW 80.04.010 to exclude small water companies, the Commission has no authority to regulate small water companies. RCW 80.01.040; RCW 80.04.010; RCW 80.04.130. WUTC v. Eldorado Hills Utility, Inc., Docket No. U-85-55, Second Supplemental Order (March 1986).

The Commission will approve a telecommunications company's rate filing if the company has met its burden of proving that the proposed rates are fair, just and reasonable. RCW 80.04.130; RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co. et al., Docket No. U-85-23 et al., Fifteenth Supplemental Order (March 1986).

The Commission will approve proposed tariff revisions when they are fair, just, reasonable and not contrary to the public interest. RCW 80.04.130; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-87, Third Supplemental Order (January 1986).

RCW 80.04.150 Remunerative rates cannot be charged without approval.

The Commission will authorize reasonable economic and regulatory measures that discourage by-pass of local natural gas distribution companies, but major rate reductions to industrial customers in exchange for minor contributions to fixed costs will not be approved when they would improperly shift fixed costs to other utility customers. RCW 80.28.020; RCW 80.28.074. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C and U-88-2127-C, Fourth Supplemental Order (May 1989).

RCW 80.04.180 Supersedeas--Water companies seeking supersedeas.

Pursuant to RCW 80.04.180, a petition for judicial review of a Commission order does not stay or suspend the operation of that order unless the superior court so directs; if there is no such superior court order, the Commission is not barred from going forward in the cause under appeal or in other proceedings. RCW 80.04.180. In re Inter Island Telephone Co., Inc., Docket No. U-86-132, Sixth Supplemental Order (February 1987).

RCW 80.04.200 Rehearing before commission.

Cross References

- Rehearing before Commission: See WAC 480-09-820.

The Commission may consider issues related to the refund of amounts collected under a conditional requirement of refund during Commission compliance with a since-dissolved federal injunction enjoining implementation of rates ordered in a final Commission order, without waiting until after a hearing on the company's petition for rehearing in the principal case, when the remaining issues in the principal case are few and number and may be independently considered. RCW 80.04.110;

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80.04.200; 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-82-19, Sixth Supplemental Order (September 1986).

As a general rule, the Commission should not rehear prior cases based upon different decisions in later cases based upon different records. RCW 80.04.200; Former WAC 480-08-250. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-82-19, Sixth Supplemental Order (September 1986).

A party is not entitled to an oral hearing on its petition for rehearing when the matters raised are not new or of a sort that were not considered by the Commission. RCW 80.04.200; Former WAC 480-08-250. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-82-19, Sixth Supplemental Order (September 1986).

RCW 80.04.210 Commission may change orders.

The Commission may reopen a record for a limited purpose, and, if the limited issues to be addressed on the reopened record relate only to questions of law and policy, may limit the hearing required by RCW 80.04.210 to presentation of legal and policy argument. RCW 80.04.210. In re Puget Sound Power & Light Co., Docket No. U-86-131, Order Reopening & Setting Hearing (April 1988).

The Commission may rescind, alter or amend any order it has entered. RCW 80.04.210. WUTC v. Puget Sound Power & Light Co., Docket No. U-87-1262, Second Supplemental Order (September 1987).

When the Commission undertakes review of a utility's energy cost adjustment mechanism (ECAC), it does so in a special proceeding convened for that purpose pursuant to RCW 80.04.210. RCW 80.04.210; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-87-1262, Second Supplemental Order (September 1987).

Adjustments in a utility's energy cost adjustment rates to allow for the cost of purchased power to replace power lost from outages are proper when no imprudence on the part of the utility is shown. RCW 80.04.210; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-87-1262, Second Supplemental Order (September 1987).

RCW 80.04.250 Valuation of public service property.

Cross References

- Rate setting by Commission: See RCW 80.28.020 (gas/electric/water).
- Rate setting by Commission: See RCW 80.36.140 (telecommunications).

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- Burden on utility to show rates are just, fair, reasonable: See RCW 80.04.130.
- Accounting: See WAC 480-90-031; 480-100-031; 480-110-031; 480-120-031.

Note: Headnotes that relate to ratebase issues in a ratemaking proceeding appear under this RCW.

Property held for future use should be removed from rate base if it has not been acted on within a reasonable period. RCW 80.04.250. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

A company may not create a regulatory asset through deferral accounting without a prior Commission accounting order authorizing such action. RCW 80.04.250; 80.04.300; WAC 480-100-031. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

A company may not recover AFUDC on preliminary survey and investigation costs. RCW 80.04.250; 80.28.020; WAC 480-100-031. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

RCW 80.04.250 (cont.)

Expenses associated with customer relations should not be capitalized or included in conservation accounts. RCW 80.04.250; 80.04.300; 80.28.020; WAC 480-100-031; 480-100-043. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

An electric utility's obligation to meet the public's continuing demand for power requires that the company continue to seek supply sources; therefore, reasonable expenses incurred in pursuit of those resources should be recoverable. The extent of the recovery depends upon whether the expense should be considered in valuing utility property and whether that property can be characterized as "used and useful". RCW 80.04.250; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

The Commission will not adjust a utility's rate base to account for the property tax effects of a state law permitting taxing districts to increase spending by the use of local levies if no local jurisdiction had levied such a tax as of the date hearings commenced. RCW 80.04.250. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

The Commission may require that each utility establish that sales and transfers of property to affiliates were made at fair market value. RCW 80.04.250; RCW 80.12.020; RCW 80.16.020; WAC 480-100-036. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

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Advertisements that do not provide information about energy efficiency or conservation, and that attempt to portray electricity as a better alternative to gas, are not allowable in a utility company's rate base or its operating expense. RCW 80.04.250; RCW 80.28.020; WAC 480-100-043. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

The purpose of a rate proceeding is to develop evidence from which the Commission may determine the following: (1) The most appropriate test period; (2) The company's results of operation during that period, adjusted for unusual events; (3) The appropriate rate base represented by the net book value of assets that are used and useful in providing utility service; (4) An appropriate rate of return that the company may earn on its rate base; (5) Any existing revenue deficiency; and (6) The allocation of any rate increase, fairly and equitably among the company's ratepayers. RCW 80.04.250; RCW 80.28.020.

WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).
WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

RCW 80.04.250 (cont.)

The questions of whether the rates and charges proposed in a utility's tariffs are fair, just, reasonable and sufficient, are resolved by establishing the fair value of the company's property in service, determining the proper rate of return permitted on that property, and then ascertaining the appropriate spread of rates charged various customer classes to recover that return. RCW 80.04.250; RCW 80.28.020.

WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).
WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

To assure future compliance with proper "inactive services" accounting requirements, no rate base adjustment is necessary for company assets that have been inactive for more than two years. RCW 80.04.250. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Seventh Supplemental Order (December 1989).

The rate base adjustment to reflect a utility's net unamortized gain from the sale and lease-back of an office building is properly made in the same manner as general and administrative expenses are divided. RCW 80.04.250. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989); Seventh Supplemental Order (December 1989).

"Rate base" is the company's net "plant in service" that is used and useful in providing the

commodity and service to ratepayers at any given point in time. RCW 80.04.250. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

The Commission generally calculates rate base adjustments using an average of the monthly averages during the test year; however, when ratepayers will receive a full payback of the cost of gas savings realized through the company's investment in an interstate gas pipeline link, the full cost of the investment may be incorporated into the rate base. RCW 80.04.250. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

A Notice of Hearing that cites to chapter 80.04 RCW gives the parties sufficient notice that the proceeding may include the valuation of rate base. Former RCW 34.04.090; RCW 80.04.250. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S West Communications, Docket No. U-89-2698-F, First Supplemental Order (September 1989).

A water company's actual rate base is adjusted to take into account known and measurable changes that will occur during the period rates will be in effect; such pro forma adjustments correct what would otherwise cause a miscalculation of the value of property that is used and useful for service. RCW 80.04.250. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

RCW 80.04.250 (cont.)

The Commission will approve a telephone company's plan for deregulating embedded customer premises equipment that is in general conformity with the Commission's order. RCW 80.04.250; WAC 480-120-031. In re Procedures to Implement Detariffing of Embedded Customer Premises Equipment Owned by Independent Telephone Companies (Whidbey Telephone Co.), Docket No. U-85-38, Eighteenth Supplemental Order (December 1987); (Inland Telephone Co.), Docket No. U-85-38, Nineteenth Supplemental Order (December 1987); (Pacific Telecom), Docket No. U-85-38, Twentieth Supplemental Order (December 1987); (General Telephone Co. of the Northwest), Docket No. U-85-38, Twenty-first Supplemental Order (December 1987).

Disallowance of a portion of a natural gas rate increase based on excess capacity in a gas utility's system is not appropriate when there is no indication that the utility's plant was improperly planned or constructed. RCW 80.04.250; RCW 80.28.020. WUTC v. Cascade Natural Gas Corp., Docket No. U-86-100, Fourth Supplemental Order [Rate Design] (May 1987).

A water company's expenditure for interior cleaning and painting of a water tower constitutes a capital expense when there is no engineering evidence that the expense could have been prevented by improved regular maintenance. RCW 80.04.250; RCW 80.28.020; WAC 480-110-031. WUTC v. Pacific Beach Water, Inc., Docket No. U-86-57, Order on Review (February 1987).

For purposes of ratemaking, the original cost method is generally the proper measure of rate base and not a market value approach. RCW 80.04.250. WUTC v. Pacific Beach Water, Inc., Docket

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No. U-86-57, Order on Review (February 1987).

In calculating gross revenue deficiency, a separate treatment is mandated by RCW 80.28.025 for weatherization program rate base elements. RCW 80.04.250; RCW 80.28.025. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

Until utility plant is placed in service, it should not be included results of operations or in rate base. RCW 80.04.250; RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

If the Commission is requested to consider a new method for calculating the cost of coal burned to produce power, and particularly the calculation of the coal investment rate base, the proponent should present the method as a change and should fully explain it, using exhibits detailing the calculations. RCW 80.04.250. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

Recognition of gain from the sales of nondepreciable surplus property reflects sound ratemaking policy and is fair and proper. A company's rate base should be reduced by the amount of any unrecorded gain from such sales. RCW 80.04.250. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

RCW 80.04.250 (cont.)

If the Commission does not have sufficient information on a record to assign a dollar value to an adjustment to rate base, it may instruct its staff to perform an audit of the relevant transactions and to recommend a specific dollar amount in the company's next rate proceeding. RCW 80.04.250. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

The difference between net book value and fair market value at the time of transfer of property by a public service company should be considered gain on the sale of the property and treated as income to the company. RCW 80.04.250; RCW 80.12.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

The Commission will accept a utility's recommended approach for computing the proper level of conservation investment in the rate base when the utility's adjustment is consistent with RCW 80.28.025, and it provides the utility the proper incentive for conservation investment. RCW 80.04.250; RCW 80.28.025. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

Inclusion in rate base of an electric company's full allocated investment in a new generating plant that has begun commercial operations [Colstrip 4] is the traditional rate base treatment. The

traditional approach clearly is preferable to a phase-in approach when it would not result in rate shock. RCW 80.04.250; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

Only that which can truly be defined as conservation advertising may be included in an electric company's rate base. RCW 80.04.250; WAC 480-100-043. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

The Commission may allow amortization and full recovery of the cost of a seismic study that was a substantial facility-oriented expense, was required by the Federal Energy Regulatory Commission (FERC), and was performed to meet federal safety requirements. RCW 80.28.020; RCW 80.04.250. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

The average of monthly averages methodology rather than the simple average approach is the preferred methodology for computing the rate base depreciation expense adjustment. RCW 80.04.250. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

The annualization adjustment to rate base of a generating plant that was not in operation for the full test year must accurately reflect plant cost based on the entire year. RCW 80.04.250. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

RCW 80.04.250 (cont.)

The working capital adjustment is sufficiently fundamental to the rate-making process as to require a consistent approach by the Commission (the balance sheet method), unless sufficient reason is shown for substantial change. RCW 80.04.250; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

The purpose of a rate proceeding is to develop evidence from which the Commission may determine: 1) the appropriate test period to use for the investigation of the company's operations; 2) the company's results of operations for the appropriate test period, adjusted for unusual events during the test period and for known and measurable events; 3) the appropriate rate base which is derived from the balance sheets of the test period, and which represents the net book value of assets provided by investors' funds that are used and useful in providing utility service to the public; 4) an appropriate rate of return the company is authorized to earn on the rate base established by the Commission; 5) any existing revenue deficiencies; and 6) the allocation of the rate increases, if any, fairly and equitably among the company's ratepayers. RCW 80.04.250; 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-52, Fifth Supplemental Order (May 1986).

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In calculating gross revenue deficiency, a separate treatment pursuant to RCW 80.28.025 is mandated for weatherization program rate base elements. RCW 80.04.250; RCW 80.28.025. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

The Commission may reject Public Counsel's proposed adjustment to remove from rate base additional investment required to replace a defective precipitator in the absence of sufficient information in the record to calculate the adjustment properly. RCW 80.04.250. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

In reaching a decision on the proper cost of equity, the Commission must exercise its sound discretion to make an informed judgment based on the testimony of experts. RCW 80.04.250; RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

If a utility maintains an electric generation, transmission and distribution system covering several states, the Commission must determine the entire rate base of the utility and then allocate to Washington an appropriate share of responsibility for that investment. RCW 80.04.250. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

A utility's rate base shown on the books is adjusted to take into account known and measurable changes that will occur during the period rates will be in effect; such pro forma adjustments correct what would otherwise cause a miscalculation of the value of property that is used and useful for service. RCW 80.04.250. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

RCW 80.04.300 Budgets to be filed by companies--Supplementary budgets.

Cross References

- ▶ Rate setting by Commission: See RCW 80.28.020 (gas/electric/water).
- ▶ Rate setting by Commission: See RCW 80.36.140 (telecommunications).
- ▶ Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.
- ▶ Burden on utility to show rates are just, fair, reasonable: See RCW 80.04.130.
- ▶ Commission shall adopt policies to encourage cogeneration, conservation, and production from renewables: See RCW 80.28.025.
- ▶ Accounting: See WAC 480-90-031 (gas); WAC 480-100-031 (electric); WAC 480-110-031 (water); WAC 480-120-031 (telecommunications).

The Commission may require reasonable accounting changes in continuing an experimental periodic rate adjustment mechanism. RCW 80.04.300; 80.28.025; WAC 480-100-031; 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

A company may not create a regulatory asset through deferral accounting without a prior Commission accounting order authorizing such action. RCW 80.04.250; 80.04.300; WAC 480-100-031. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

Generally, the Commission will not engage in single issue or "piecemeal" ratemaking; approval of a change in a company's depreciation methodology between rate cases, without considering other aspects of the company's rate structure, would amount to single issue ratemaking. RCW 80.04.300; 80.04.350; 80.36.140. In re U S WEST Communications, Inc., Docket No. UT-920085, Third Supplemental Order (April 1993).

A Commission order authorizing an accounting treatment of costs does not constitute pre-approval of recovery of such costs in subsequent rate proceedings. As with other adjustments, the company bears the burden of proving the fairness, justness and reasonableness of the costs in subsequent rate proceedings. Here, the Commission approved an accounting treatment for electric lost margin amounts arising from the company's implementation of a conservation program, and accounting treatment for gas conservation investment. RCW 80.04.300; 80.28.020; WAC 480-90-031; 480-100-031. In re The Washington Water Power Company, Docket Nos. UE-920351-T, UE-920352-P, UE-920353-T, UE-920354-P, Order Approving Tariff Revisions and Authorizing Accounting Treatment (May 1992).

RCW 80.04.300 (cont.)

A Commission order authorizing an accounting and potential ratemaking treatment of costs does not constitute a determination of the reasonableness of the costs or their proper treatment in a subsequent rate case. Such accounting and potential ratemaking treatment will be subject to review in subsequent rate proceedings; as with other adjustments, the company will bear the burden of proving the fairness, justness, and reasonableness of the costs and their proper treatment. Here, the Commission approved an accounting and potential ratemaking treatment of federal income taxes to be paid by the company related to tax benefits associated with conservation expenditures during a prior period. RCW 80.04.300; 80.28.020; WAC 480-100-031. In re Puget Sound Power & Light Company, Docket No. UE-920349, Order Authorizing Accounting Treatment (April 1992).

When a utility's method of calculating the Accumulated Deferred Income Tax Credits to be credited to its non-utility income follows the requirements of an earlier Commission decision, that method may be approved and booking of the amounts may be authorized. RCW 80.04.300; WAC 480-100-031. In re Puget Sound Power & Light Co., Docket No. U-86-115, Fourth Supplemental Order

Chapter 80.04 RCW

(January 1989).

The Commission will grant a utility's request to modify the amortization methods that it uses for treatment of certain investment tax credits when the Commission concludes that the modification is in the public interest. RCW 80.04.300; WAC 480-100-031. In re Application of Puget Sound Power & Light Co., Docket No. U-86-115, Second Supplemental Order [Reconsideration] (February 1987).

When a utility's proposed accounting treatment of deferred investment tax credits (ITC) risks disallowance by the IRS, the Commission may approve it conditioned on the utility obtaining a favorable IRS ruling before implementing the change. RCW 80.04.300; WAC 480-100-031. In re Application of Puget Sound Power & Light Co., Docket No. U-86-115, Second Supplemental Order [Reconsideration] (February 1987).

The Commission will deny authorization of an accounting change when the utility has not proved that the proposed variation from the otherwise appropriate method of accounting would be in the public interest. RCW 80.04.300; WAC 480-100-031. In re Puget Sound Power & Light Co., Docket No. U-86-115, Decision and Order (December 1986).

Although the Commission generally prescribes the Uniform System of Accounts for utility accounting purposes, the Commission is not bound to follow the Uniform System of Accounts for ratemaking purposes when the public policies affecting the setting of rates differ from the public policies regarding the recording of financial activity. RCW 80.04.300; RCW 80.28.020; WAC 480-100-031. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

The Commission may allow a utility to use budgeted figures in lieu of actual figures to determine future operations if budgeted information is all that is available. RCW 80.04.300; RCW 80.28.020; WAC 480-100-031. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

RCW 80.04.310 Commission's control over expenditures.

The Commission's failure to resolve an affiliated interest issue when it had an opportunity to do so does not necessarily estop it from later filing a complaint that would require an affiliated interest adjustment. Estoppel; RCW 80.04.310; WAC 480-120-036. WUTC v. U S WEST Communications, Docket No. U-89-3245-P, Order Denying Motion to Dismiss Complaint (August 1992).

The Commission will not approve a location surcharge without a demonstration that the surcharge is required to meet reasonable costs of providing the service. Location surcharges are not just or reasonable to the extent they exceed reasonable costs associated with providing the location. RCW 80.04.130; 80.36.080. WUTC v. Payline Systems, Inc., d/b/a Oasis, Docket No. UT-911250, Second Supplemental Order (July 1992).

RCW 80.04.350 Depreciation and retirement accounts.

Generally, the Commission will not engage in single issue or "piecemeal" ratemaking; approval of a change in a company's depreciation methodology between rate cases, without considering other aspects of the company's rate structure, would amount to single issue ratemaking. RCW 80.04.300; 80.04.350; 80.36.140. In re U S WEST Communications, Inc., Docket No. UT-920085, Third Supplemental Order (April 1993).

RCW 80.04.380 Penalties--Violations by public service companies.

The Commission is committed to reducing regulatory costs and abuse of legal process. It may impose penalties in a complaint proceeding when the factual circumstances in the proceeding are not in great dispute and the proceeding is unnecessarily prolonged and complicated by a party's pursuance of highly questionable legal theories. RCW 80.04.380. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a Amnet, Docket No. U-86-43, Seventh Supplemental Order (March 1988).

The Commission does not have to reach findings regarding consequential damages in order to determine whether penalties must be assessed pursuant to RCW 80.04.380 and RCW 80.04.405. RCW 80.04.380; RCW 80.04.405. Rose Monroe v. Puget Sound Power & Light Co., Docket No. U-85-70, Order Affirming Proposed Order (October 1986).

Once the Commission finds facts that constitute a violation of law or regulation, it must assess a penalty whether or not there are identifiable damages -- it has no discretion. However, the Commission may choose between alternative penalties for the same violation, and it has the discretion to mitigate the relevant penalty to zero under appropriate circumstances. RCW 80.04.380; RCW 80.04.405. Rose Monroe v. Puget Sound Power & Light Co., Docket No. U-85-70, Order Affirming Proposed Order (October 1986).

RCW 80.04.380 (cont.)

A deprivation of electrical service resulting from wrongful disconnection is a recurring violation each day it continues, and the Commission may assess a penalty for each day the violation continues. RCW 80.04.380; WAC 480-100-071. Rose Monroe v. Puget Sound Power & Light Co., Docket No. U-85-70, Order Affirming Proposed Order (October 1986).

One purpose of penalty assessments is to encourage future compliance with the Commission's rules. RCW 80.04.380. Rose Monroe v. Puget Sound Power & Light Co., Docket No. U-85-70, Order Affirming Proposed Order (October 1986).

RCW 80.04.387 Penalties--Violations by other corporations.

Chapter 80.04 RCW

The Commission is not authorized by law to impose sanctions for abuse of process. RCW 80.04.110; RCW 80.04.387. Abode Realty v. Telephone Utilities of Washington, Docket No. U-86-116, Order Affirming Proposed Order and Dismissing Complaint (December 1987).

RCW 80.04.405 Additional penalties--Violations by public service companies and officers, agents, and employees thereof.

The Commission does not have jurisdiction to award money damages. but does have jurisdiction to assess a penalty against a telecommunications company in the event of a wrongful disconnect. RCW 80.04.405; WAC 480-120-081. Sharad M. Bhatnagar v. U S WEST Communications, Docket No. UT-900603, Second Supplemental Order (June 1991).

Although an electric utility may have committed no violation of law or regulation material to the termination of a private complainant's electrical service, the Commission may, on its own motion, engage in a full review of the matter, and it may assess a penalty if it finds a violation of law or regulation. RCW 80.04.405; WAC 480-100-071. Theophal v. Puget Sound Power & Light Co., Docket No. U-87-1492-T, Order Dismissing Complaint (August 1988).

The Commission does not have to reach findings regarding consequential damages in order to determine whether penalties must be assessed pursuant to RCW 80.04.380 and RCW 80.04.405. RCW 80.04.380; RCW 80.04.405. Rose Monroe v. Puget Sound Power & Light Co., Docket No. U-85-70, Order Affirming Proposed Order (October 1986).

Once the Commission finds facts that constitute a violation of law or regulation, it must assess a penalty whether or not there are identifiable damages -- it has no discretion. However, the Commission may choose between alternative penalties for the same violation, and it has the discretion to mitigate the relevant penalty to zero under appropriate circumstances. RCW 80.04.380; RCW 80.04.405. Rose Monroe v. Puget Sound Power & Light Co., Docket No. U-85-70, Order Affirming Proposed Order (October 1986).

RCW 80.04.410 Orders and rules conclusive.

An order of the Commission is presumed conclusive unless set aside, and it is valid and effective against all persons, to the extent of its terms, pursuant to RCW 80.04.410. However, an order does not purport to bind persons not parties to the proceeding, except to the extent that the decision is a final order not subject to collateral attack. RCW 80.04.410. In re Inter Island Telephone Co., Inc., Docket No. U-86-132, Sixth Supplemental Order (February 1987).

RCW 80.04.440 Companies liable for damages.

The commonly accepted public policy is that public utilities may be held harmless for the results of any unauthorized release of non-published information, in order to prevent ratepayers from paying for the company's defense of frivolous lawsuits. RCW 80.04.440. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-88-2149-T, Second Supplemental Order (March 1989).

CHAPTER 80.08 RCW

SECURITIES

The Commission will approve a water company's purchase of another water company when the application for approval meets the requirements of Chapter 80.08 RCW and the rules and regulations of the Commission, and when it appears that the purchase agreement is reasonable and consistent with the public interest. In re South Sound Utility Co., Inc., Docket No. UW-921450 (January 1993).

Chapter 80.08 RCW does not require Commission approval of an "equity infusion," into a regulated utility by its sole shareholder and parent corporation if the "equity infusion" does not constitute the issuance of stock by the company, is not an "issued" evidence of ownership, and does not constitute a debt owed to the parent by the company. However, pursuant to RCW 80.01.040 and 80.04.070, the Commission may require the company to file information about equity infusions. Chapter 80.08 RCW. In re U S WEST Communications, Inc., Docket No. UT-911077, Declaratory Order and Order Requiring Filing of Information (January 1992).

Before assuming any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when the securities are payable at periods of more than 12 months after the date thereof, a public service company must first secure from the Commission an order authorizing it to do so [changed by Laws 1994, ch. 251, §5, to a filing requirement]. RCW 80.08.130. In re Pacificorp, Docket No. U-87-1338-AT, Second Supplemental Order (July 1988).

CHAPTER 80.12 RCW

TRANSFERS OF PROPERTY

RCW 80.12.020 Order required to sell, merge, etc.

The Commission may approve a transfer of territory between two local exchange companies and revision of their exchange maps when the transfer is consistent with the public interest. RCW 80.12.020; 80.12.040; 80.36.230. In re U S WEST Communications, Inc./ Telephone Utilities of Washington, Inc., d/b/a PTI Communications, Inc., Docket Nos. UT-940507 and UT-940527, Order Granting Application (May 1994).

The Commission may require that each utility establish that sales and transfers of property to affiliates were made at fair market value. RCW 80.04.250; RCW 80.12.020; RCW 80.16.020; WAC 480-100-036. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

The Commission will not approve a proposed merger of interstate electric utilities until it receives sufficient information on the effects of the merger on ratepayers and on the regional transmission system. RCW 80.12.020. In re Pacificorp, Docket No. U-87-1338-AT, First Supplemental Order (May 1988).

The difference between net book value and fair market value at the time of transfer of property by a public service company should be considered gain on the sale of the property and treated as income to the company. RCW 80.04.250; RCW 80.12.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

RCW 80.12.030 Disposal without authorization void.

The Commission will deny an application to transfer property when the proposed transfer is not consistent with the public interest. RCW 80.12.030; WAC 480-143-050. In re Puget Sound Power & Light Co., Docket No. U-86-131, Order Denying Proposed Assignment [of BPA credits] (June 1987).

Any sale or assignment of property made without Commission authority is void. RCW 80.12.030; WAC 480-143-050. In re Puget Sound Power & Light Co., Docket No. U-86-131, Order Denying Proposed Assignment [of BPA credits] (June 1987).

RCW 80.12.040 Authority required to acquire property or securities of utility.

The Commission may approve a transfer of territory between two local exchange companies and revision of their exchange maps when the transfer is consistent with the public interest. RCW 80.12.020; 80.12.040; 80.36.230. In re U S WEST Communications, Inc./ Telephone Utilities of Washington, Inc., d/b/a PTI Communications, Inc., Docket Nos. UT-940507 and UT-940527, Order Granting Application (May 1994).

RCW 80.12.040 (cont.)

Prior Commission authorization is required in order for a public service company, directly or indirectly, to purchase, acquire, or become the owner of any of the franchises, properties, facilities, capital stocks or bonds of any other public service company. RCW 80.12.040; WAC 480-143-010. In re Pacificorp, Docket No. U-87-1338-AT, Second Supplemental Order (July 1988).

The Commission will approve a proposed merger between interstate electric companies and the issuance of securities and assumption of obligations when they are consistent with the public interest. RCW 80.12.040. In re Pacificorp, Docket No. U-87-1338-AT, Second Supplemental Order (July 1988).

When a merger of interstate electric utilities is projected to have a beneficial effect on the utility's operating expenses, the Commission may require the company to file new rates that will afford Washington ratepayers their allocated share of the projected merger benefits. RCW 80.12.040. In re Pacificorp, Docket No. U-87-1338-AT, Second Supplemental Order (July 1988).

CHAPTER 80.16 RCW

AFFILIATED INTERESTS

Whether or not negotiations between a public service company and an affiliated interest were "arms-length" is irrelevant to the reasonableness test under WAC 80.16.030. The statute requires the Commission to disallow payment or compensation to an affiliated interest unless the public service company satisfactorily proves the reasonableness of the payment or compensation. RCW 80.16.030. WUTC v. Washington Natural Gas Company, Docket Nos. UG-911236, UG-911270, Third Supplemental Order (September 1992).

When a public service company contends that non-price terms add sufficient value to a contract with an affiliated interest to justify the contract price, the company must present evidence quantifying the value of the asserted benefit that is sufficient to enable the Commission to measure the reasonableness of the price term. RCW 80.16.030. WUTC v. Washington Natural Gas Company, Docket Nos. UG-911236, UG-911270, Third Supplemental Order (September 1992).

Generally, ratepayers should not be required to support a company's purchases from an affiliate at a price greater than the company would pay for comparable supply on the open market. RCW 80.16.030. WUTC v. Washington Natural Gas Company, Docket Nos. UG-911236, UG-911270, Third Supplemental Order (September 1992).

The Commission will approve a contract entered into between a public service company and an affiliated interest only if it is reasonable and consistent with the public interest. RCW 80.16.020. WAC 480-120-036 In re Pacific Northwest Bell Telephone Co., Docket No. 87-1685-AA, First

Chapter 80.12 RCW

Supplemental Order (September 1991).

Chapter 80.16 RCW (cont.)

The Commission may require that each utility establish that sales and transfers of property to affiliates were made at fair market value. RCW 80.04.250; RCW 80.12.020; RCW 80.16.020; WAC 480-100-036. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

Contracts between a telecommunications company and its affiliate that attempt to reduce or eliminate a directory publishing fee from the parent company to its affiliate will be approved only to the extent necessary to continue the publication of telephone directories. The Commission will reserve a determination of the appropriate publishing fee to be paid, for rate-making purposes, until a general rate proceeding. RCW 80.16.020; WAC 480-120-036. In re Pacific Northwest Bell Telephone Co., Docket No. U-86-156, Third Supplemental Order (February 1989).

The Commission has jurisdiction over affiliated interest transactions whether the goods or services involved flow from the affiliated interest to the public service company or from the public service company to the affiliated interest. RCW 80.16.020. In re Pacific Northwest Bell Telephone Co., Docket No. U-86-156, Second Supplemental Order (October 1988).

The Commission has the power to exercise jurisdiction and examine all transactions between a public service company and an affiliated interest to determine whether or not they are in the public interest. RCW 80.16.020. In re Pacific Northwest Bell Telephone Co., Docket No. U-86-156, Second Supplemental Order (October 1988).

The Commission may disallow or disapprove payments from a public service company to an affiliated interest if the payments are unreasonable. RCW 80.16.020; RCW 80.16.030; RCW 80.16.050. In re Pacific Northwest Bell Telephone Co., Docket No. U-86-156, Second Supplemental Order (October 1988).

The Commission may revise or amend terms and conditions of affiliated interest contracts when necessary to protect and promote the public interest. RCW 80.16.050. In re Pacific Northwest Bell Telephone Co., Docket No. U-86-156, Second Supplemental Order (October 1988).

The Commission will disallow payment of a proposed yellow pages publishing fee to an affiliated interest when the fee represents a substantial transfer of assets to the affiliate without adequate compensation. RCW 80.16.020. In re Pacific Northwest Bell Telephone Co., Docket No. U-86-156, Second Supplemental Order (October 1988).

A utility has the burden of proof to demonstrate under RCW 80.16.030 that payment to an affiliated interest is just and reasonable. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Order Denying Reconsideration (July 1988).

Chapter 80.16 RCW

Chapter 80.16 RCW (cont.)

The Commission has the authority to determine whether an affiliated interest contract is reasonable and consistent with the public interest. It is the applicant's responsibility to demonstrate the reasonableness of the contract. In determining the contract's reasonableness, the Commission has the authority to determine the adequacy of proof offered by the applicant. RCW 80.16.020. In re Pacific Northwest Bell Telephone Co., Docket No. U-86-156,, Order Denying Motion for More Definite and Detailed Statement (December 1987).

The Commission will approve a contract or arrangement entered into between a public utility and an affiliated interest only if the contract or arrangement is reasonable and consistent with the public interest. RCW 80.16.020. In re Puget Sound Power & Light Co., Docket No. U-86-131, Order Denying Proposed Assignment [of BPA credits] (June 1987).

A utility has a positive burden to demonstrate a net benefit to ratepayers as a result of any affiliated transactions. RCW 80.16.030; RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

So that the Commission can continually monitor affiliated transactions, the Commission may order its staff and the utility to design a reporting system regarding such transactions. RCW 80.16.050. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

The Commission must examine the reasonableness of payments made to affiliated interests. RCW 80.16.030; RCW 80.36.140. WUTC v. Continental Telephone Co. of the Northwest, Inc., Docket No. U-85-32, Second Supplemental Order (April 1986).

RCW 80.16.040 requires that "satisfactory proof" of the reasonableness of payments made to an affiliated interest include relevant cost records and other relevant accounts of the affiliated interest. RCW 80.16.040. WUTC v. Continental Telephone Co. of the Northwest, Inc., Docket No. U-85-32, Second Supplemental Order (April 1986).

The "cost plus fair return" approach, not the "return on sales" approach, is the appropriate methodology for determining whether a payment made to an affiliated interest is reasonable. RCW 80.16.030; RCW 80.36.140. WUTC v. Continental Telephone Co. of the Northwest, Inc., Docket No. U-85-32, Second Supplemental Order (April 1986).

CHAPTER 80.28 RCW

GAS, ELECTRICAL, AND WATER COMPANIES

RCW 80.28.010 Duties as to rates, services, and facilities--Limitations on termination of utility service for residential heating.

A gas company should, to the extent possible, make transportation service available to end-use customers without otherwise prejudicing its obligation to provide service to its core group of sales customers. The extent of its obligation does not rise to the level of "common carrier" status whereby the company would be required, under any circumstances, to provide transportation service to all who request it. RCW 80.28.010; WAC 480-90-056. WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

The Commission is required to set water companies' rates at a level that is fair, just and reasonable. RCW 80.28.010. WUTC v. Ludlow Utilities Co., Docket No. U-87-1550-T, Fourth Supplemental Order (October 1988).

When the effect of a change in the federal tax laws will not cause a public service company to exceed its authorized rate of return, no tariff reduction needs to be filed. RCW 80.28.010; RCW 80.36.080. In re Requirement ... to Report ... Impact of Revisions of the Federal Tax Code, Docket No. U-86-130, First Supplemental Order (April 1987), corrected, Second Supplemental Order (April 1987).

RCW 80.28.020 Commission to fix just, reasonable, and compensatory rates.

Cross References

- ▶ Rate setting for telecommunications companies: See RCW 80.36.140.
- ▶ Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.
- ▶ Commission's control over expenditures: See RCW 80.04.300 -.310.
- ▶ Burden on utility to show rates are just, fair, reasonable: See RCW 80.04.130.
- ▶ Temporary rates during suspension period: See RCW 80.04.130.
- ▶ Commission shall adopt policies to encourage cogeneration, conservation, and production from renewables: See RCW 80.28.025.
- ▶ Banded rates: See RCW 80.28.074 -.075.
- ▶ Accounting: See WAC 480-90-031 (gas); WAC 480-100-031 (electric); WAC 480-110-031 (water); WAC 480-120-031 (telecommunications).

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RCW 80.28.020 (cont.)

-- Rate Setting Generally

Using historical data in setting future rates based on equitable grounds does not constitute retroactive ratemaking. RCW 80.28.020; 80.28.080. Intalco Aluminum Corporation, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911477; Weyerhaeuser Company, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911481; WUTC v. Cascade Natural Gas Corporation, Docket No. UG-920062; Fourth Supplemental Order (December 1992).

The governing principle for determining rates to be charged by a public utility is the right of the public on the one hand to be served at a reasonable charge, and the right of the utility on the other to a fair return on the value of its property used in the service. RCW 80.28.020. WUTC v. Alderton-McMillin Water Supply, Inc., Docket No. UW-911041, Third Supplemental Order (August 1992).

The Commission will reject a water company surcharge request when the company fails to demonstrate that the surcharge is just and reasonable. RCW 80.04.130(2); 80.28.020; 80.28.022. WUTC v. Alderton-McMillin Water Supply, Inc., Docket Nos. UW-910563 & UW-911474, Order Rejecting Surcharge and Securities Filing (April 1992).

When a water company has provided inadequate and insufficient water service to its customers for a number of years, has been largely inaccessible and unresponsive to its customers, and has not taken reasonable and adequate steps to remedy a multitude of problems with its system, it has not carried its burden of demonstrating that a proposed surcharge that would result in increased rates is just, reasonable, and in the public interest. RCW 80.04.130(2); 80.28.020; 80.28.022. WUTC v. Alderton-McMillin Water Supply, Inc., Docket Nos. UW-910563 & UW-911474, Order Rejecting Surcharge and Securities Filing (April 1992).

Rates that bring revenues that are not sufficient to enable a water company to meet its operating expenses, pay its debts, and make improvements necessary to provide adequate supplies of water of acceptable quality, are not fair, just, reasonable and sufficient. RCW 80.28.020. WUTC v. Sound Water Company, Inc. Docket No. U-89-2717-F, Settlement Agreement (May 1991).

Proposed tariff changes that are not sufficiently supported will be rejected. RCW 80.04.130(2); 80.28.020. WUTC v. Washington Natural Gas Company, Docket No. UG-900210, Second Supplemental Order (January 1991).

A natural gas interruptible transportation tariff should set rates at levels that are sufficient to recover the costs of providing service. RCW 80.28.020. WUTC v. Washington Natural Gas Company, Docket No. UG-900210, Second Supplemental Order (January 1991).

The Commission may allow refiling of a tariff with conditions, including a limited period of effect

and the exemption of current service agreements, when the conditions are appropriate. RCW 80.28.020. WUTC v. Washington Natural Gas Company, Docket No. UG-900210, Second Supplemental Order (January 1991).

RCW 80.28.020 (cont.)

The Commission will deny a rate increase to a water company that has exhausted its credibility by promising to improve the system and pay off debts, using proceeds from increases granted in previous rate cases, but making no appreciable effort to fulfill its promises. RCW 80.28.020. WUTC v. Pacific Beach Water, Inc., Docket No. U-89-2953-T, First Supplemental Order (April 1990).

Revenues from increased charges sought in the rate filing at issue must be shown in the company's revenue request and are not proper pro forma adjustments. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

The purpose of a rate proceeding is to develop evidence from which the Commission may determine the following: (1) The most appropriate test period; (2) The company's results of operation during that period, adjusted for unusual events; (3) The appropriate rate base represented by the net book value of assets that are used and useful in providing utility service; (4) An appropriate rate of return that the company may earn on its rate base; (5) Any existing revenue deficiency; and (6) The allocation of any rate increase, fairly and equitably among the company's ratepayers. RCW 80.04.250; RCW 80.28.020.

WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

The questions of whether the rates and charges proposed in a utility's tariffs are fair, just, reasonable and sufficient, are resolved by establishing the fair value of the company's property in service, determining the proper rate of return permitted on that property, and then ascertaining the appropriate spread of rates charged various customer classes to recover that return. RCW 80.04.250; RCW 80.28.020.

WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

In calculating a water company's revenue requirements, the Commission uses measures uniquely tailored to the financial and practical circumstances of the company. RCW 80.28.020. WUTC v. Richardson Water Companies, Docket No. U-88-2294-T, Third Supp. Order (February 1989).

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A rate is retroactive and illegal when applied to a service without prior notice and review. However, the "true-up" portion of an energy cost adjustment clause (ECAC) is not retroactive rate-making, because it involves a rate that is to be applied only prospectively to services later rendered, and only after hearing. RCW 80.04.130; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-81-41 (Reopened), Sixth Supplemental Order (December 1988).

RCW 80.28.020 (cont.)

If it approves a banded rate tariff for industrial gas service that is subject to effective competition, the Commission will review the gas company's performance under the banded rate approach as part of the company's next general rate case, and will expect the company to demonstrate that it has bargained effectively and has made substantial efforts to realign its supply portfolio consistent with a least cost supply plan, and to shed pipeline fixed costs rather than passing them on to captive customers. RCW 80.28.020; RCW 80.28.075. WUTC v. Washington Water Power Co., Docket No. U-87-1532-T, Second Supplemental Order (September 1988).

Possible revenue shortfalls caused by a banded rate approach will be dealt with in a gas company's next general rate filing or subsequent rate cases. RCW 80.28.020; RCW 80.28.075. WUTC v. Washington Water Power Co., Docket No. U-87-1532-T, Second Supplemental Order (September 1988).

In a rate proceeding, the ultimate determination to be made by the Commission is whether the rates and charges proposed in a utility company's revised tariffs are fair, just, reasonable and sufficient. RCW 80.28.020. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

The Commission may accept a settlement and stipulation proposed by the parties in a general rate case if it finds the proposed settlement to be consistent with the public interest. RCW 80.28.020; WAC 480-09-465. WUTC v. South Bainbridge Water System, Inc., Docket No. U-87-1355-T et al., Third Supplemental Order (May 1988).

The Commission will approve a tariff revision filing when it is just, fair and reasonable and is in accordance with the provisions and intent of previous Commission orders in the proceeding. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-87-1262, Third Supplemental Order (September 1987).

The Commission's decision to continue to monitor information provided regarding benchmark rates and to review revised benchmark rates in a supplemental proceeding does not bind it to periodic reviews. RCW 80.28.020. WUTC v. Cascade Natural Gas Corp., Docket No. U-86-100, Sixth Supplemental Order (June 1987).

In a rate case, the Commission will accept a proposed stipulated settlement agreement when it represents the best means of resolving the issues presented and when the terms are fair, just and reasonable. RCW 80.28.020; Former WAC 480-08-110. WUTC v. Washington Water Power Co., Docket No. U-86-99, Second Supplemental Order [WNP-3 Order] (February 1987).

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In a rate proceeding, a water company has the burden of proof to establish that its proposed rates and charges are fair, just and reasonable. RCW 80.04.130; RCW 80.28.020. WUTC v. Pacific Beach Water, Inc., Docket No. U-86-57, Order on Review (February 1987).

RCW 80.28.020 (cont.)

The Commission will accept an electric utility's proposed tariff revisions if the existing rates for electric service are insufficient to yield reasonable compensation for the service and the revisions will yield a fair rate of return on the utility's rate base and will result in rates and charges that are fair, just, reasonable and sufficient. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-86-147, Second Supplemental Order [ECAC revisions] (January 1987).

The Commission will accept a stipulated settlement providing for a rate increase if the tariff filings submitted pursuant to the stipulation yield a fair return on the utility's rate base and will result in rates that are just, fair, reasonable, and sufficient. RCW 80.28.020; Former WAC 480-08-110. WUTC v. Cascade Natural Gas Corp., Docket No. U-86-100, Second Supplemental Order (January 1987).

WAC 480-80-240, which allows local gas distribution companies to pass through reductions to their rate schedules on one day's notice in concert with reductions they receive from their suppliers, is intended to provide the pipeline and local distribution companies' customers greater flexibility in maintaining price parity between natural gas and alternate fuels. RCW 80.28.020; WAC 480-80-240. WUTC v. Washington Natural Gas Co., Docket No. U-86-117, Third Supplemental Order (October 1986).

The Commission's acceptance for ratemaking purposes of adjustments to a utility's rate increase request that Commission Staff proposed and the company accepted should not be construed as approval, acceptance or consent by the Commission to any facts or rate-making principles or methods that may be represented by these adjustments for the purposes of any future rate proceedings. RCW 80.28.020. WUTC v. Northwest Natural Gas Co., Docket No. U-86-41, Third Supplemental Order (September 1986).

A utility has a positive burden to demonstrate a net benefit to ratepayers as a result of any affiliated transactions. RCW 80.16.030; RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

The Commission will reject a utility's argument that it is being treated unfairly when compared to the treatment of another utility in another case when the differing treatment is based on differences in circumstances presented in the respective cases. RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

The Commission may allow amortization and full recovery of the cost of a seismic study that was

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a substantial facility-oriented expense, was required by the Federal Energy Regulatory Commission (FERC), and was performed to meet federal safety requirements. RCW 80.28.020; RCW 80.04.250. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

RCW 80.28.020 (cont.)

The working capital adjustment is sufficiently fundamental to the rate-making process as to require a consistent approach by the Commission (the balance sheet method), unless sufficient reason is shown for substantial change. RCW 80.04.250; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

Although the Commission generally prescribes the Uniform System of Accounts for utility accounting purposes, the Commission is not bound to follow the Uniform System of Accounts for ratemaking purposes when the public policies affecting the setting of rates differ from the public policies regarding the recording of financial activity. RCW 80.04.300; RCW 80.28.020; WAC 480-100-031. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

The fact that the Commission accepts a proposed adjustment does not necessarily mean that the Commission endorses the methodology supporting the adjustment. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

The Commission may allow a utility to use budgeted figures in lieu of actual figures to determine future operations if budgeted information is all that is available. RCW 80.04.300; RCW 80.28.020; WAC 480-100-031. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

In an electric rate-making proceeding, test year fuel expenses and secondary sales revenue must be adjusted to reflect normal streamflow conditions. The Commission's acceptance of an adjustment using a 40-year rolling average does not mean that the Commission will use a rolling 40-year average for all future cases. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

The Commission's rejection of proposed alternative rate-making treatments in one case should not be construed to mean that the Commission may not adopt appropriate alternative treatments in other cases. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

In considering parties' proposed alternative rate-making treatment of a new generating resource

(Colstrip 4), the Commission will consider factors such as the prudence of the company's actions regarding the resource and the impact of the various proposals on the company's financial indicators. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

The Commission will approve proposed tariff revisions when they are fair, just, reasonable and not contrary to the public interest. RCW 80.04.130; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-87, Third Supplemental Order (January 1986).

RCW 80.28.020 (cont.)

-- Operating Expense Adjustments

The Commission may disallow in whole or in part the recovery in rates of the cost of stockholder-oriented incentive compensation plans. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-921262; UE-920499; UE-920433, Fifteenth Supplemental Order (December 1993).

Parties in a rate case are expected to provide backup numbers and information sufficient to allow the Commission to calculate whether a proposed adjustment is acceptable. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

The Commission disfavors the use of national averages to project production plant availability when actual figures are available. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

A company may not recover AFUDC on preliminary survey and investigation costs. RCW 80.04.250; 80.28.020; WAC 480-100-031. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

Expenses associated with customer relations should not be capitalized or included in conservation accounts. RCW 80.04.250; 80.04.300; 80.28.020; WAC 480-100-031; 480-100-043. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

Merely promotional marketing expenses will not be allowed in calculating a company's operating expenses. RCW 80.28.020; WAC 480-90-031; 480-90-043. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Fourth Supplemental Order (September 1993).

The Commission will disallow the expense of advertising that is comparative and promotional in

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nature and does not promote safety, conservation, or any other permissible subject under the Commission's rule on advertising, WAC 480-90-043. RCW 80.28.020; WAC 480-90-031; 480-90-043. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Fourth Supplemental Order (September 1993).

The Commission may disallow incentive employee pay expenses when the payments are not tied directly to goals that clearly and directly benefit ratepayers. RCW 80.28.020; WAC 480-90-031. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Fourth Supplemental Order (September 1993).

RCW 80.28.020 (cont.)

All costs are subject to review and reexamination during general rate case proceedings. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-901183-T; UE-901184-P, Fourth Supplemental Order on Reconsideration (April 1991).

The Commission may accept a company's pro forma adjustment for new power purchase contracts, proposed on rebuttal, if none of the parties challenges the adjustment. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Fifth Supplemental Order (March 1990).

A union wage increase cannot be considered a proper pro forma adjustment until a contract has been signed so that a known and measurable amount can be reflected in the company's operating expense. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

Expenses associated with customer relations should not be capitalized or included in conservation accounts. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

Advertisements that do not provide information about energy efficiency or conservation, and that attempt to portray electricity as a better alternative to gas, are not allowable in a utility company's rate base or its operating expense. RCW 80.04.250; RCW 80.28.020; WAC 480-100-043. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

An electric utility's obligation to meet the public's continuing demand for power requires that the company continue to seek supply sources; therefore, reasonable expenses incurred in pursuit of those resources should be recoverable. The extent of the recovery depends upon whether the expense should be considered in valuing utility property and whether that property can be characterized as "used and useful". RCW 80.04.250; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order

(January 1990).

The dollar result of a tariff order may depend in part upon calculation of the Federal Energy Regulatory Commission ("FERC") rates to which the utility is subject; the utility must calculate its revenue requirement using the rates on record; when a later gas-cost tracking case is processed a true-up adjustment will be made. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-89-3105-T, First Supplemental Order (December 1989).

The Commission may accept a gas company's evidence regarding the sources and costs of its gas supplies and on the supply levels required to serve its customers. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

RCW 80.28.020 (cont.)

The payment collected from the customer for Contributions in Aid of Construction (CIAC) must be sufficient to cover the contribution, plus the utility's resulting tax liability. RCW 80.04.250; RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

A "restating actual" adjustment modifies the booked results of a utility's intrastate operation during the test period by removing amounts which are not representative or which are not properly included in the test period. RCW 80.28.020.

WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).
WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

"Pro forma" adjustments give effect to known and measurable changes, not offset by other factors occurring during or after the test year. RCW 80.28.020.

WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).
WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

The Commission is required to fix water rates based on reasonable compensation for services rendered. RCW 80.28.020. WUTC v. Ludlow Utilities Co., Docket No. U-87-1550-T, Fourth Supplemental Order (October 1988).

For purposes of ratemaking, the Commission will not allow a water company to charge for improvements made to real property rented from directors/stockholders when the company fails to

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demonstrate that this proposed charge is just and reasonable. RCW 80.28.020. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Order Denying Reconsideration (July 1988).

For purposes of rate-making, the Commission may require a utility to maintain time records showing the actual time and nature of work performed by all persons seeking compensation for work performed; in the absence of complete records, the Commission may disallow all compensation claimed. RCW 80.28.020; WAC 480-110-031. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

In allocating amounts booked to payroll and unemployment taxes as shown on a small water company's quarterly payroll reports, it is appropriate to use a hypothetical administrative manager; so as to be able to allocate the functions of the hypothetical manger, the utility may use the time records of its owner/employees. RCW 80.28.020. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

RCW 80.28.020 (cont.)

The Commission may disallow for rate-making purposes bonuses paid by a small water company to its employees as not being sufficiently known and measurable when the bonuses are not related to employee or company performance. RCW 80.28.020. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

The Commission may disallow for rate-making purposes fees paid to directors of a small water company in the absence of evidence of any other service provided by the directors that would render such compensation reasonable. RCW 80.28.020. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

The Commission may disallow for rate-making purposes amounts claimed by a small water company to recover a loss on leasehold improvements when the property in question is owned by owners-directors of the company and there is no evidence to show that the lease is either in the best interests of the company or beneficial to ratepayers. RCW 80.28.020. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

Although a negative figure for income tax may be inappropriate when looking at a small water company's overall results of operation, it may be appropriate when reviewing individual aspects of the company's operations that are later combined to determine an overall operational tax liability. RCW 80.28.020. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

For purposes of rate-making, a water company's test period level of staffing should match its test period of expenses; if one is increased without the other, a mismatch occurs. RCW 80.28.020. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

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For purposes of determining an adjustment pertaining to a small water company's contributions to employees' IRA accounts during the test year, the Commission may allow a recently eligible employee's minimum contribution to be recognized in the adjustment when the activity is a proper component of the company's expenses, known and measurable, and not revenue related or subject to variation. RCW 80.28.020. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

The Commission will not recognize a water company's test year contributions to employee IRA accounts as normal operating expenses to the extent that the test year contributions were an employer's match of an optional employee contribution; the optional amounts are not sufficiently known and measurable from year to year to be included. RCW 80.28.020. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

When determining an allowance for owners' salaries at a small water company for rate-making purposes, the Commission may allow use of a hypothetical administrative manager on an emergency basis when necessary to resolve a significant discrepancy between time card records and hours claimed. RCW 80.28.020. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

RCW 80.28.020 (cont.)

A water company's "budgeted" expenses for rent and pump wiring may be accepted for rate-making purposes if they may be seen as "known and measurable" under traditional ratemaking. RCW 80.28.020. WUTC v. Crosswoods Water Co., Inc., Docket No. U-87-650-T, Third Supplemental Order (January 1988).

When some of an electric company's energy resources are purchased from qualifying facilities (QF's), in order to reach the ultimate determination whether rates and charges proposed in a utility's revised tariffs are fair, just, reasonable and sufficient, the Commission must first make an underlying determination whether avoided cost has been calculated properly under federal and state laws. RCW 80.28.020; Former WAC 480-105-050. WUTC v. Washington Water Power Co., Docket No. U-86-119, Second Supplemental Order (April 1987).

When a utility incorrectly calculates its avoided cost for purchases of power from qualifying facilities (QF's), the resulting tariffs are not fair, just, reasonable, and sufficient. RCW 80.28.020; Former WAC 480-105-050. WUTC v. Washington Water Power Co., Docket No. U-86-119, Second Supplemental Order (April 1987).

The Commission will not allow the budgeted amount of a manager's salary as an expense for rate purposes when the amount actually paid is less than the amount budgeted and the company has failed to carry its burden of proof as to either the probability of payment of the full budgeted amount or its reasonableness. RCW 80.28.020. WUTC v. Pacific Beach Water, Inc., Docket No. U-86-57, Order on Review (February 1987).

As a general rule, a health insurance premium paid as an employee benefit is a proper expense for

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utility rate-making. However, when the employee is an officer or employee of more than one business, the company must justify the allocation of cost to the regulated utility. RCW 80.04.130; RCW 80.28.020. WUTC v. Pacific Beach Water, Inc., Docket No. U-86-57, Order on Review (February 1987).

For purposes of utility rate-making, the reasonable cost of pursuing rate relief is a proper expense. RCW 80.28.020. WUTC v. Pacific Beach Water, Inc., Docket No. U-86-57, Order on Review (February 1987).

A water company's expenditure for interior cleaning and painting of a water tower constitutes a capital expense when there is no engineering evidence that the expense could have been prevented by improved regular maintenance. RCW 80.04.250; RCW 80.28.020; WAC 480-110-031. WUTC v. Pacific Beach Water, Inc., Docket No. U-86-57, Order on Review (February 1987).

The Commission will not allow in rates the projected expenses of a generating resource that will be out of service during the period the rates will be in effect. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-86-147, Second Supplemental Order [ECAC revisions] (January 1987).

RCW 80.28.020 (cont.)

The Commission supports generally the prerogative of management to provide incentives for efficiency, and may allow wage increases that are rewards for good performance and increases in productivity to be recovered in rates. RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

A utility has the burden of proof to demonstrate that consumer survey expenses are legitimately charged to ratepayers. RCW 80.04.130; RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

Until utility plant is placed in service, it should not be included results of operations or in rate base. RCW 80.04.250; RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

For rate-making purposes, the Commission may disallow, in part, a utility's costs relating to an accounting firm's services when the utility has other accounting services available to it and the fee appears excessive for the services rendered. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

Reasonable rate case costs, including legitimate expenses associated with appeal of prior commission orders, are proper expenses for ratemaking purposes and may be amortized over a reasonable period. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

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The Commission will scrutinize expenditures for membership dues paid by an electric company to organizations, to determine whether they are for allowable purposes. RCW 80.28.020; WAC 480-100-043. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

The Commission will reject an electric company's proposed adjustment to take into account increased insurance premium costs when the company's figures represent unbilled, unpaid amounts and are mere estimates of what the future charge may be. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

An electric company's membership contributions to a research institute are an allowable operating expense for ratemaking purposes when the institute focuses on research that is socially beneficial, valuable to the ratepayers and pertinent to the needs of the company. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

RCW 80.28.020 (cont.)

The Commission will accept a public service company's proposed adjustment for advertising when the company has met its burden of proof with regard to the adjustment and has excluded items of a political or promotional nature. RCW 80.28.020; WAC 480-100-043. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

Expenses for dues and membership costs in certain trade and industry organizations are legitimate costs of doing business for a utility, and allowance of such expenses is not inconsistent with the public interest. RCW 80.28.020; WAC 480-100-032. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

Supplemental pensions are not legitimate expenses of a utility for rate-making purposes when they appear to be gifts and the company fails to demonstrate that there is any benefit to ratepayers connected with their payment. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

In a general rate case, the Commission will evaluate a utility's advertising expenses according to whether the advertising has demonstrated benefits to ratepayers. Ratepayers should not be required to pay for advertising that merely enhances the company's image. However, ratepayers should be required to pay for costs imposed by requirement of law, such as information regarding a moratorium on disconnection of service enacted by the legislature. RCW 80.28.020; WAC 480-

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100-043. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

-- Prudence

Under current practice, the proper forum for a Commission review of an electric company's decisions regarding what resources it should build or purchase is a general rate case. RCW 80.28.020 (prudence); Chapter 480-107 WAC. SESCO, Inc. v. Washington Water Power Company, Docket Nos. UE-930616, Order Dismissing Complaint (November 1994).

The requirement for contemporaneous documentation of the prudence of a resource acquisition is a necessary and logical adjunct to the statute placing the burden of proof on an electric company in a ratemaking proceeding. RCW 80.04.130; 80.28.020 (prudence). WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Twentieth Supplemental Order [Prudence] (December 1994).

In a rate case, an electric company has the burden of proving the prudence of its purchased power contracts by a preponderance of the evidence. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Nineteenth Supplemental Order [Prudence Order] (September 1994).

RCW 80.28.020 (cont.)

In a rate case, an electric company is not entitled to a rebuttable presumption that its decisions to purchase power were prudent. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Nineteenth Supplemental Order [Prudence Order] (September 1994).

Instead of a prescriptive approach to planning, the Commission has adopted a flexible planning rule intended to encourage companies to take responsibility for their resource planning and to pursue opportunities for least cost resources. The Commission's approach gives a company more management discretion, and the capability to seize unplanned opportunities. The specific resource decisions are then reviewed in an after-the-fact prudence review. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Nineteenth Supplemental Order [Prudence Order] (September 1994).

The Commission has adopted a prudence standard that it applies in evaluating any resource acquisition decision, whether it is to build or to purchase. The utility must first determine whether new resources are necessary. The utility must then determine how to fill that need in a cost effective manner. When a utility is considering purchase of a resource, it must evaluate that resource against the standards of what other purchases are available, and against the standard of what it would cost to build the resource itself. Specific factors that must be included in the analysis are included in the

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Public Utility Regulatory Policies Act of 1978, and in Commission rules. Other factors will be identified in the company's least cost plan (integrated resource plan). The factors identified by the National Energy Policy Act of 1992 must be considered in purchases made after its adoption. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Nineteenth Supplemental Order [Prudence Order] (September 1994).

When an electric company seeks to acquire resources, the Commission requires it to analyze any resource alternative under consideration utilizing up-to-date information (rather than relying on planning numbers), and adjusting for such factors as end effects, capital costs, dispatchability, transmission costs, and whatever other factors its planning has disclosed need specific analysis at the time of an acquisition decision. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Nineteenth Supplemental Order [Prudence Order] (September 1994).

Although a least cost plan may contain information helpful in determining the prudence of resource selection, it is only one consideration in the evaluation. The Commission's acceptance of a company's least-cost plan does not represent a finding of prudence of a particular resource selection. The least-cost planning process is not sufficiently rigorous or specific to support an independent finding of prudence. RCW 80.28.020; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Nineteenth Supplemental Order [Prudence Order] (September 1994).

RCW 80.28.020 (cont.)

An electric company's least cost plan and informational avoided cost schedule establish only general planning data, and evidence that resource acquisitions were consistent with the company's least cost plan and were priced below avoided cost is not sufficient to demonstrate prudence. RCW 80.28.020; WAC 480-1000-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Nineteenth Supplemental Order [Prudence Order] (September 1994).

When an electric company acquires resources, the Commission requires it to keep adequate contemporaneous records of its decision making process that will allow the Commission subsequently to evaluate the adequacy of its decisions. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Nineteenth Supplemental Order [Prudence Order] (September 1994).

End effect adjustments that correct for the effects of inflation are necessary to accurately compare and contrast resource options with different lives when an electric company makes a decision to purchase power resources. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company,

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Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Nineteenth Supplemental Order [Prudence Order] (September 1994).

The Commission's acceptance of a PURPA contract does not preclude it from later reviewing the contract for prudence to determine what amounts will be recovered from ratepayers. RCW 80.28.020; Chapter 480-107 WAC. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Nineteenth Supplemental Order [Prudence Order] (September 1994).

The Commission's determination whether to accept or reject a gas least cost plan should not be taken as an assessment of the reasonableness of any element of the plan, nor does it constitute a determination that any resource acquisition is prudent or imprudent. These determinations are properly reserved for ratemaking. RCW 80.28.020; WAC 480-90-191. In re Northwest Natural Gas, Docket No. UG-910922, Commission Letter of Comment on Least Cost Plan (May 1994).

WAC 480-80-335 specifically provides for separate handling of rate-making and contract approval matters; contract approval will not determine expense and revenues of the utility for ratemaking purposes. The Commission will review the prudence of a company's decision to enter into a special contract in a subsequent general rate case. RCW 80.28.020; WAC 480-80-335. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-930511, Fourth Supplemental Order (April 1994).

A utility has an ongoing responsibility to acquire resources at the lowest cost to its customers consistent with appropriate levels of reliability. It is not expected to follow the letter of its least cost plan in acquiring resources. It is expected to pursue unanticipated opportunities that arise if the opportunity is least cost and beneficial to its ratepayers. RCW 80.28.020 (prudence); WAC 480-90-191. In re Washington Water Power Company, Docket No. UG-910921, Commission Letter of Acceptance (January 1994).

RCW 80.28.020 (cont.)

The Commission may partially disallow the cost of new purchased power in rates if the company fails to demonstrate the prudence of the resource acquisitions. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

The test the Commission applies to measure prudence of new resource acquisition is what a reasonable board of directors and company management would have decided given what they knew or reasonably should have known to be true at the time they made a decision. This test applies both to the question of need and the appropriateness of the expenditures. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

A demonstration of prudence of resource acquisition includes showing both that the selection of the resource was necessary and reasonable and that the costs of acquisition were appropriate. RCW

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80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

A least cost plan is not intended to be a document upon which prudence of new resource acquisitions could be demonstrated, and a least cost plan usually is not rigorous enough to demonstrate prudence. The Commission's acceptance of a company's least cost plan does not represent a finding of prudence of a particular resource acquisition. RCW 80.28.020; WAC 480-100.251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

Contracting below avoided cost is one factor that may be considered in determining the prudence of a resource acquisition and is a broad check on prudence, but is not proof of prudence. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

The Commission will not disallow, on the basis of "imprudence", expenses directly related to an electric utility's investment in a project -- even though the project was ultimately halted -- when the completed project would have provided a unique source of necessary electrical power, the company discovered no viable alternative prior to the halt of construction, and when all parties agree that the investment was a prudent one at the beginning. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990); Fifth Supplemental Order (March 1990).

Adjustments in a utility's energy cost adjustment rates to allow for the cost of purchased power to replace power lost from outages are proper when no imprudence on the part of the utility is shown. RCW 80.04.210; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-87-1262, Second Supplemental Order (September 1987).

RCW 80.28.020 (cont.)

Disallowance of a portion of a natural gas rate increase based on excess capacity in a gas utility's system is not appropriate when there is no indication that the utility's plant was improperly planned or constructed. RCW 80.04.250; RCW 80.28.020. WUTC v. Cascade Natural Gas Corp., Docket No. U-86-100, Fourth Supplemental Order [Rate Design] (May 1987).

In the event the Commission determines imprudent a utility's failure to fully re-evaluate the cost effectiveness of a project at a time when a full evaluation was warranted, the Commission may disallow a portion of the project costs. RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

In considering parties' proposed alternative rate-making treatment of a new generating resource

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(Colstrip 4), the Commission will consider factors such as the prudence of the company's actions regarding the resource and the impact of the various proposals on the company's financial indicators. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

-- Tracker-type Mechanisms

The Commission generally will reject the use of a tracker mechanism to recover safety compliance-related expenditures; use of a tracker is limited to expenses that are easily measurable, beyond the company's ability to control, and are both substantial and essential to the company's operations. RCW 80.28.020; 480-90-031. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Fourth Supplemental Order (September 1993).

The Commission generally will not approve tracker-type mechanisms (mechanisms that track and pass through to ratepayers certain expenditures) unless it finds a substantial ratepayer benefit. RCW 80.28.020. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Third Supplemental Order (March 1993).

The Commission has used tracker-type mechanisms only rarely; when it has used them the expenditures generally have had one or more of the following characteristics: they have been easily measurable; they have been beyond the company's ability to control; and they are substantial expenses, essential to carry out company operations. RCW 80.28.020. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Third Supplemental Order (March 1993).

The use of a gas purchase tracker mechanism assures that changes in a utility's gas cost are reflected in rates as they occur. The Commission cannot accept an incentive proposal that would operate asymmetrically, allowing company management to retain part of any gas cost savings and tending to protect management from downside risk. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

RCW 80.28.020 (cont.)

A "tracker" proceeding is not a proper or appropriate proceeding in which to propose shifting of cost responsibility among classes. There is not sufficient time in a "tracker" proceeding to give thorough consideration to the ramifications of any proposed rate restructure, and consideration of rate restructure issues is not consistent with the purpose of WAC 480-80-240 which is to allow purchased gas price variations to be passed through to consumers as quickly as possible. RCW 80.28.020; WAC 480-80-240. WUTC v. Washington Natural Gas Co., Docket No. U-86-117, Third Supplemental Order (October 1986).

-- Attrition Adjustment

An adjustment for attrition (the change in relationship among revenues, expenses, and rate base over time, in which growth in expenses exceeds growth in revenues from factors beyond a company's control, such as high inflation) is an extraordinary measure, not generally included in general rate relief. RCW 80.28.020. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Fourth Supplemental Order (September 1993).

Attrition is the change in relationship between revenues, expenses and rate base that is expected to occur during the period rates based on the historic pro forma test period are in effect. The Commission will reject a calculation of the attrition allowance that does not take into account recent changes in economic factors. RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

Attrition is a complex phenomenon that results from an imbalance among growth in revenues, expenses and/or rate base that causes a change in the rate of return from a company's authorized level. The Commission may accept an attrition adjustment when its review of the growth projections indicates that the proposed figures closely represent growth to be anticipated during the period when rates will be in effect. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

-- Energy Cost Adjustment Mechanisms

Ratepayers should receive the benefit of a power cost adjustment clause mechanism (PCA) because a PCA introduces rate instability for ratepayers and produces earnings stability for stockholders. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

The Commission may approve a filing that amortizes, over a suitable period of time, the Deferred Energy Costs remaining on an electric utility company's books following termination of the Energy Cost Adjustment Clause schedule. RCW 80.04.300; RCW 80.28.020; WAC 480-100-031. WUTC v. Puget Sound Power & Light Co., Docket No. U-89-3572-T, First Supplemental Order (July 1990).

RCW 80.28.020 (cont.)

The Commission will reject a power cost adjustment (PCA) mechanism when the utility's proposal includes elements that are not weather-related, and when the PCA's influence on the cost of capital is too difficult to measure and cumbersome to administer. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

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Ratepayer understanding of the link between unusual weather and the cost of providing power, is a key attribute of an acceptable power cost adjustment (PCA). RCW 80.28.020. In re Washington Water Power Co., Docket No. U-88-2363-P, First Supplemental Order (September 1989).

A power cost adjustment (PCA) mechanism should include a specific cost-of-capital reduction (to compensate ratepayers who would be assuming risks currently borne by the company's shareholders). RCW 80.28.020. In re Washington Water Power Co., Docket No. U-88-2363-P, First Supplemental Order (September 1989).

A power cost adjustment (PCA) should be a short-run accounting procedure that reflects the short-run cost changes caused by unusual weather. RCW 80.28.020. In re Washington Water Power Co., Docket No. U-88-2363-P, First Supplemental Order (September 1989).

The Energy Cost Adjustment Clause (ECAC) procedure, implemented to reduce rate and earnings volatility related to weather conditions, is subject to the following requirements: (1) The company must present evidence of the actual size of any downward adjustment to the electric company's cost-of-capital resulting from its use of the ECAC process; (2) the ECAC will not be the rate-making vehicle used to evaluate the reasonableness of acquiring new resources to meet the company's new loads; and (3) the ECAC must be limited to those cost changes directly linked to changes in weather conditions. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-81-41 (Reopened), Seventh Supplemental Order (April 1989).

A rate is retroactive and illegal when applied to a service without prior notice and review. However, the "true-up" portion of an energy cost adjustment clause (ECAC) is not retroactive rate-making, because it involves a rate that is to be applied only prospectively to services later rendered, and only after hearing. RCW 80.04.130; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-81-41 (Reopened), Sixth Supplemental Order (December 1988).

The Commission may require reasonable adjustments in continuing an electric utility's energy cost adjustment mechanism. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-81-41 (Reopened), Sixth Supplemental Order (December 1988).

When, on a periodic review of a utility's energy cost adjustment mechanism (ECAC), the Commission finds conflicting evidence concerning the financial impact of the ECAC on the utility's cost of capital, it will require that quantifiable evidence of the ECAC's impact on the utility's cost of capital be demonstrated in the utility's next rate case. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-81-41 (Reopened), Sixth Supplemental Order (December 1988).

RCW 80.28.020 (cont.)

When the Commission undertakes review of a utility's energy cost adjustment mechanism (ECAC), it does so in a special proceeding convened for that purpose pursuant to RCW 80.04.210. RCW 80.04.210; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-87-1262,

Second Supplemental Order (September 1987).

Adjustments in a utility's energy cost adjustment rates to allow for the cost of purchased power to replace power lost from outages are proper when no imprudence on the part of the utility is shown. RCW 80.04.210; RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-87-1262, Second Supplemental Order (September 1987).

Allowing recovery of resource costs in an energy cost adjustment (ECAC) proceeding does not foreclose the Commission's later full review of the appropriate value of the resource. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-86-147, Second Supplemental Order [ECAC revisions] (January 1987).

The Commission will accept an electric company's energy cost adjustment clause [ECAC] tariff revision when it meets criteria set out in prior Commission orders. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-86-55, Second Supplemental Order (May 1986).

The Commission may reject Public Counsel's proposed alternative adjustment to normalize thermal plant performance during an energy cost adjustment clause [ECAC] revision proceeding when the specific adjustment proposed is not one that was contemplated in the origination of the ECAC procedure, and is not one that has previously been presented to the Commission. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-86-55, Second Supplemental Order (May 1986).

-- Regulatory Mechanisms Intended to Encourage Least Cost Planning and Conservation

▸ See RCW 80.28.025.

-- Effect of Commission Acceptance of Accounting Treatment or Settlement in Other Proceedings

Permitting a utility to use a certain accounting treatment for expenses between rate cases does not commit the Commission to allowing recovery of the amounts recorded until the particular expenses have been properly examined in a general rate case. RCW 80.28.020; WAC 480-100-031. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-921262; UE-920499; UE-920433, Fifteenth Supplemental Order (December 1993).

RCW 80.28.020 (cont.)

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The Commission's affirmation that benchmark discounts ordered in an earlier proceeding were fair, just and reasonable does not foreclose reexamination, in an appropriate proceeding, of the competitive conditions existing, and reflecting the existence or nonexistence of competition in rates. Industrial rates set at an amount lower than parity as a result of competitive pressure may be set at an amount greater than parity when those pressures no longer exist. RCW 80.28.020; WAC 480-90-026; 480-90-031. Intalco Aluminum Corporation, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911477; Weyerhaeuser Company, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911481; WUTC v. Cascade Natural Gas Corporation, Docket No. UG-920062; Seventh Supplemental Order (February 1993).

A Commission order authorizing an accounting treatment of costs does not constitute pre-approval of recovery of such costs in subsequent rate proceedings. As with other adjustments, the company bears the burden of proving the fairness, justness and reasonableness of the costs in subsequent rate proceedings. Here, the Commission approved an accounting treatment for electric lost margin amounts arising from the company's implementation of a conservation program, and accounting treatment for gas conservation investment. RCW 80.04.300; 80.28.020; WAC 480-90-031; 480-100-031. In re The Washington Water Power Company, Docket Nos. UE-920351-T, UE-920352-P, UE-920353-T, UE-920354-P, Order Approving Tariff Revisions and Authorizing Accounting Treatment (May 1992).

A Commission order authorizing an accounting and potential ratemaking treatment of costs does not constitute a determination of the reasonableness of the costs or their proper treatment in a subsequent rate case. Such accounting and potential ratemaking treatment will be subject to review in subsequent rate proceedings; as with other adjustments, the company will bear the burden of proving the fairness, justness, and reasonableness of the costs and their proper treatment. Here, the Commission approved an accounting and potential ratemaking treatment of federal income taxes to be paid by the company related to tax benefits associated with conservation expenditures during a prior period. RCW 80.04.300; 80.28.020; WAC 480-100-031. In re Puget Sound Power & Light Company, Docket No. UE-920349, Order Authorizing Accounting Treatment (April 1992).

A Commission order allowing the costs of a proposed acquisition to be recorded on a company's books of account in a certain manner is not a determination on the merits of the proposed transaction or the amount of the investment that may be included in ratebase in a future proceeding. The appropriate amount, if any, of the purchase price to be included in the company's ratebase must be determined in a rate or other appropriate proceeding. RCW 80.04.250; 80.04.300; 80.28.020; WAC 480-100-031. In re Pacificorp, d/b/a Pacific Power & Light Company, Docket No. UE-911186(P), Order Granting Petition (January 1992).

Initial review of new contracts included in a periodic rate adjustment mechanism proceeding does not foreclose the Commission's later full prudency review in a general rate case. RCW 80.28.020; 80.28.025. WUTC v. Puget Sound Power & Light Company, Docket No. UE-910626, First Supplemental Order [PRAM 1 order] (September 1991).

RCW 80.28.020 (cont.)

The Commission will approve an electric utility's most recent calculation of its Accumulated Deferred Investment Tax Credits, upon a finding that the submission is consistent with a prior order in the cause and is consistent with prior ADITC calculations reviewed and approved by the Commission. RCW 80.28.020; WAC 480-100-031. In re Puget Sound Power & Light Co., Docket No. U-86-115, Fifth Supplemental Order (July 1990).

Acceptance of a stipulation does not limit the Commission's or the parties' right to address in future cases those issues negotiated or deferred by the parties in stipulation. RCW 34.05.060; RCW 80.28.020; WAC 480-09-465. WUTC v. Washington Water Power Co., Docket No. UE-900093, Second Supplemental Order (June 1990).

The Commission may extend the service area of a Gas Plant for Hire to an additional contiguous area, in which company gas mains and customers are located, when the extension will satisfy the public convenience and necessity. The reasonableness of services, expenditures, and their treatment, however, must be resolved in subsequent proceedings. RCW 80.28.020; RCW 80.28.190. In re Washington Natural Gas Co., Docket No. U-89-3448-G (January 1990).

Reopening on reconsideration in a rate case to receive evidence on the current "bypass" status of one of the utility's large industrial customers would be appropriate, as it is a known and measurable factor. RCW 80.28.020; WAC 480-09-810. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Seventh Supplemental Order (December 1989).

-- Capital Structure/Cost of Capital

The Commission will use a hypothetical capital structure in establishing a company's reasonable earnings requirements. It will determine an appropriate balance of debt and equity within the capital structure on the bases of economy and safety. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

One factor that the Commission will consider in determining a company's appropriate capital structure is the possible effect of a capital structure on the company's bond rating. RCW 80.28.020. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Fourth Supplemental Order (September 1993).

The Commission will use a hypothetical capital structure in establishing a company's reasonable earnings requirements. In doing so, it will balance the economic risks and the costs of shareholder funding with those of debt financing. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990); Fifth Supplemental Order (March 1990).

Short-term debt generally may be included within a utility's capital structure for ratemaking

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purposes. RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

RCW 80.28.020 (cont.)

Calculation of the cost of preferred stock may take into account losses suffered by the company in a stock redemption and reacquisition program. Generally, a utility is entitled to recover a return on losses regarding a stock reacquisition program when the losses were taken in order to reduce the cost of preferred stock. RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

The Commission makes cost of money decisions individually in each case according to the record in that case and considering each individual utility's unique circumstances. RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

The Commission will require a pro forma debt interest adjustment when an actual test year debt level differs from the debt level included in a capital structure adopted for rate-making purposes. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

In reaching a decision on the proper cost of equity, the Commission must exercise its sound discretion to make an informed judgment based on the testimony of experts. RCW 80.04.250; RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

-- Rate of Return

The Commission does not guarantee that public service companies will achieve a specified rate of return, and a company's failure to achieve the rate of return it anticipated when it entered into a settlement agreement is not a reason to relieve it of obligations set out in a Commission-approved settlement agreement. RCW 80.28.020; WAC 480-09-465. In re GTE Northwest Incorporated and Contel of the Northwest, Inc., Docket No. UT-910499, Sixth Supplemental Order (February 1994).

The Commission believes, based on experience and consideration of alternate approaches, that the discounted cash flow (DCF) analysis represents the most satisfactory method of measuring investor expectation. It is convinced that the CAPM methodology is flawed and of extremely limited usefulness in that analysis. RCW 80.28.020. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Fourth Supplemental Order (September 1993).

The Commission has the ability to consider the quality of service a water company provides its customers in determining the company's authorized rate of return on equity, and may authorize a reduced rate of return if it finds that the service is manifestly substandard. RCW 80.28.020. In re Alderton-McMillin Water System, Inc., Docket No. UW-930155, First Supplemental Order (August

1993).

What is a reasonable rate of return is a question of fact, the determination of which calls for the exercise of common sense and sound judgment. RCW 80.28.020. WUTC v. Alderton-McMillin Water Supply, Inc., Docket No. UW-911041, Third Supplemental Order (August 1992).

RCW 80.28.020 (cont.)

When a water company has failed to provide water service that is safe and adequate for a number of years, has failed adequately to maintain its water systems, and has been largely inaccessible and unresponsive to its customers, it has not demonstrated that its proposed increases would result in rates that are fair, just, reasonable and sufficient. It may be appropriate and prudent in such circumstances to approve rates that provide a lower rate of return on equity than the Commission would grant to a company that is providing adequate service and meeting its public service obligations, at least during a period when the Commission is monitoring the company's compliance with Commission orders requiring improvements in water quality and service. RCW 80.28.020. WUTC v. Alderton-McMillin Water Supply, Inc., Docket No. UW-911041, Third Supplemental Order (August 1992).

When a reasonable rate of return on investment would result in insufficient revenues to meet a water company's current reasonable cash flow requirement, the Commission may authorize higher rates that would yield sufficient revenues. RCW 80.28.020. WUTC v. Sound Water Company, Inc., Docket No. U-89-2717-F, Settlement Agreement (May 1991).

A utility is entitled to the opportunity to earn a rate of return sufficient to maintain its financial integrity, attract capital on reasonable terms, and receive a return comparable to other enterprises of corresponding risk. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

If an investment in a specific project resulted in actual overall earnings below a gas utility's authorized rate of return for the period, the company's alternatives would be to reduce controllable expenses, increase sales, or file for a general rate increase. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

In that the least cost planning rule, WAC 480-90-191, requires gas utilities to develop a strategic gas acquisition plan that will more accurately reflect price sensitivity of interruptible loads, the Commission rejects elimination of the distinction between firm and interruptible gas service in spreading rates. RCW 80.28.020; WAC 480-90-191. WUTC v. Cascade Natural Gas Corp., Docket No. U-86-100, Fourth Supplemental Order [Rate Design] (May 1987).

An embedded (fully-allocated) cost of service study must accompany natural gas general rate increase filings. RCW 80.28.020. WUTC v. Cascade Natural Gas Corp., Docket No. U-86-100, Fourth Supplemental Order [Rate Design] (May 1987).

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Even though customers to whom a utility's costs are currently allocated cannot necessarily be said to have "caused" the costs, embedded cost of service studies can assist regulators in making informed judgments when they address the question of how revenue requirements will be reflected in rates. RCW 80.28.020. WUTC v. Cascade Natural Gas Corp., Docket No. U-86-100, Fourth Supplemental Order [Rate Design] (May 1987).

RCW 80.28.020 (cont.)

There are many differences between electric and natural gas industries that dictate careful evaluation of cost of service methodologies. RCW 80.28.020. WUTC v. Cascade Natural Gas Corp., Docket No. U-86-100, Fourth Supplemental Order [Rate Design] (May 1987).

The Commission has the ability to consider service quality in determining authorized rate of return on equity, and a utility's manifestly substandard service may justify reducing the utility's rate of return. RCW 80.28.020. WUTC v. Pacific Beach Water, Inc., Docket No. U-86-57, Order on Review (February 1987).

A utility is entitled to the opportunity to earn a rate of return sufficient to maintain its financial integrity, attract capital on reasonable terms, and receive a return comparable to other enterprises of corresponding risk. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

-- Conversion Factor

A conversion factor is used to calculate the amount by which a company must increase its net operating income to provide for expenses, federal income tax and gross receipt tax, and allow the company to earn a fair rate of return. The conversion factor calculation should maintain the proper relationship between revenue sensitive expenses and "grossed up" revenues, use actual franchise fees and excise tax amounts, and promote consistent treatment of unbilled revenues. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

-- Cost-of-Service; Rate Spread; Rate Design

The Commission uses the results of a company's cost-of-service study as one tool for deciding how much of an approved revenue increase should be recovered from each class of customers. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Ninth Supplemental Order [rate design order] (August 1993); clarified, Tenth Supplemental Order (September 1993).

A utility company should design and spread rates in a manner that will improve customer incentives

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for efficient use of fuel, without sacrificing considerations of equity and affordability. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Ninth Supplemental Order [rate design order] (August 1993); clarified, Tenth Supplemental Order (September 1993).

A proposal that would require all ratepayers to pay the costs of a program that most would never use and from which they would gain limited and speculative benefits only as members of the general public runs counter to long-held regulatory policies. RCW 80.28.020. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Third Supplemental Order (March 1993).

RCW 80.28.020 (cont.)

Embedded cost of service studies are important tools for comparing the relative contributions of different customer classes to a company's overall costs. RCW 80.28.020; WAC 480-90-026. WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

Cost of service is only one of the elements of a Commission decision on rate spread and rate design. Rate spread and rate design decisions may also consider equity, potential rate shock, marginal cost, and other relevant factors. RCW 80.28.020; WAC 480-90-026. WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

Rate goals should not determine the methodology used in a cost study. The purpose of a cost study is to provide consistent, accurate information about a company's costs relative to the revenues provided by different customer classes. A cost study does not provide useful information if its parameters are skewed to obtain preconceived results. RCW 80.28.020; WAC 480-90-026. WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

Demand-related costs generally should not be allocated on the basis of a single peak day. RCW 80.28.020; WAC 480-90-026. WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

Embedded cost studies should allocate some fixed costs on the basis of annual use (or throughput) in order to reflect the facts that a gas distribution system is built to deliver gas year round; that fixed costs incurred in the past do not necessarily match usage patterns in the present; and that certain shared and common costs cannot be separately attributed to the needs of specific customer groups. RCW 80.28.020; WAC 480-90-026. WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

The Commission will reject pro-forma adjustments in a cost-of-service study that are based on a company's predictions of which rate schedule a customer class would choose if the company's proposed tariffs were accepted, when the changes are not known and measurable. RCW 80.28.020; WAC 480-90-026. WUTC v. The Washington Water Power Company, Docket No. UG-901459,

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Third Supplemental Order (March 1992).

Natural gas tariff increases should be allocated fairly and equitably among the company's customers. RCW 80.28.020. WUTC v. Washington Natural Gas Company, Docket No. UG-900210, Second Supplemental Order (January 1991).

A permanent change in a tariff's minimum bill terms for natural gas transportation services ordinarily should not be approved without a cost of service study that sufficiently analyzes all relevant factors. RCW 80.28.020; WAC 480-90-031. WUTC v. Washington Natural Gas Company, Docket No. UG-900210, Second Supplemental Order (January 1991).

RCW 80.28.020 (cont.)

It is unacceptable for a utility to limit other parties' opportunity to examine a proposal by waiting until rebuttal to present its alternative rate design plan. The Commission expects the company to present its proposals in its direct case. RCW 34.05.449; RCW 80.28.020; Former WAC 480-08-180. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

Depending on the circumstances of a company and its ratepayers, the Commission may instruct the company to present comparable cost-of-service studies that use alternative methodologies, and the Commission will evaluate the application of the study results -- as well as a study's methodology -- in reaching a decision. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

Factors important in the design and spread of rates, in addition to bare cost-of-service study results, include acceptability of the rate design to customers, elasticity of demand, perceptions of equity and fairness, and rate stability over time, as well as overall economic circumstances within the region. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

As the natural gas industry restructures and alters modes of operation, the Commission may re-examine the allocation of costs among customer classes and distinguish between customer classes in ways that reflect current market and cost realities. Natural gas customers who receive a reliable supply should not be able to avoid paying a portion of the cost of maintaining that reliability by shifting most of its firm purchases either to interruptible supply or to transportation schedules. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-89-3105-T, First Supplemental Order (December 1989).

Fixed costs of gas capacity may be allocated among the company's firm customers within the state on the basis of firm peak day usage. Thus, the allocation factor for Washington would increase as the factor for Idaho decreases; this method reduces the firm capacity cost assignable to firm schedule customers to parallel the actual level of demand and to reduce the potential risk for overpayment by

Washington customers. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-89-3105-T, First Supplemental Order (December 1989).

When a utility has not credibly demonstrated that its growth estimates are accurate, when it has failed to demonstrate that it will need firm capacity exceeding its estimated system peak in the near future, and when it has offered no analysis comparing the cost of alternative means of providing for growth, the company must file a tariff revision that excludes from its recovery through firm service rates those fixed costs associated with transportation capacity attributable to capacity exceeding the company's estimated peak. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-89-3105-T, First Supplemental Order (December 1989).

RCW 80.28.020 (cont.)

To preserve the Commission's cost allocations principles -- and consistent with Commission procedures in which changes in gas costs are "flowed through" directly to customers -- utility accounts should separate gas costs from non-gas costs, spread any reduction in the gas costs to all sales schedules on a uniform cents-per-therm basis, uniformly reduce all sales and transportation schedules by the incremental amount in the reduction in demand charges, and apply any increase in the non-gas or margin portion of the revenue requirement. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

Cost of service will be only one factor considered by the Commission in determining the appropriate spread of natural gas rates among customer classes; other factors the Commission has historically considered include acceptability of rate design to customers, elasticities of demand, perceptions of equity and fairness, rate stability over time, and overall economic circumstances within the region. RCW 80.28.020. WUTC v. Cascade Natural Gas Corp., Docket No. U-86-100, Fourth Supplemental Order [Rate Design] (May 1987).

A general rate filing must be accompanied by a forward-looking embedded cost of service study to assist in making rate design decisions consistent with the standards of the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission has considered and rejected the principles of marginal cost for use in developing rate structures. RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

The Commission will not make rate spread and rate design decisions based solely on a mechanical application of cost of service studies. Rather, the Commission will analyze the cost studies presented together with other relevant evidence. RCW 80.28.020. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

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The Commission may accept a public service company's proposed rate design when the proposal is an appropriate allocation of responsibility for the company's revenue deficiency. RCW 80.28.020. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

Rate filings must be accompanied by embedded cost of service studies; the Commission will analyze such studies in making rate spread and rate design decisions consistent with the standards of PURPA. RCW 80.28.020. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

-- Temporary Rates Subject to Refund

The Commission has the authority to order temporary rates subject to refund prior to conclusion of its review of the prudence of resource acquisitions. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket No. UE-930622, Third Supplemental Order (December 1993).

RCW 80.28.022 Water company rates--Reserve account.

The Commission may deny a surcharge for the preparation of a comprehensive system plan to a company that has failed to provide safe and adequate water service for more than a decade, has shown no ability to plan effectively for the provision of adequate service, has not demonstrated a readiness and willingness to address its many water quality and service problems, and has given no indication that it will begin providing for its ratepayers' current needs while a plan is being prepared. RCW 80.28.020; 80.28.022. WUTC v. Alderton-McMillin Water Supply, Inc., Docket Nos. UW-910563 & UW-911474, Second Supplemental Order (June 1992).

The Commission will reject a water company surcharge request when the company fails to demonstrate that the surcharge is just and reasonable. RCW 80.04.130(2); 80.28.020; 80.28.022. WUTC v. Alderton-McMillin Water Supply, Inc., Docket Nos. UW-910563 & UW-911474, Order Rejecting Surcharge and Securities Filing (April 1992).

When a water company has provided inadequate and insufficient water service to its customers for a number of years, has been largely inaccessible and unresponsive to its customers, and has not taken reasonable and adequate steps to remedy a multitude of problems with its system, it has not carried its burden of demonstrating that a proposed surcharge that would result in increased rates is just, reasonable, and in the public interest. RCW 80.04.130(2); 80.28.020; 80.28.022. WUTC v. Alderton-McMillin Water Supply, Inc., Docket Nos. UW-910563 & UW-911474, Order Rejecting Surcharge and Securities Filing (April 1992).

RCW 80.28.025 Encouragement of energy cogeneration, conservation, and production from renewable resources--Consideration of water conservation goals.

Cross References

- Rate setting by Commission: See RCW 80.28.020 (gas/electric/water).
- Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.
- Burden on utility to show rates are just, fair, reasonable: See RCW 80.04.130.
- Commission policies to provide financial incentives for energy efficiency programs: See also RCW 80.28.260.

The Commission will disallow from conservation rate base the expense of advertising which is merely designed to raise a utility's credibility and which is not shown to have benefitted the ratepayers. RCW 80.28.025; WAC 480-100-031; 480-100-043. In re Puget Sound Power & Light Company, Docket No. UE-910689 [incentives]; WUTC v. Puget Sound Power & Light Company, Docket No. UE-940728 [PRAM 4], Third Supplemental Order (September 1994); clarified, Fourth Supplemental Order (December 1994).

The Commission generally will not make major changes in an experimental regulatory mechanism without considering the entire mechanism. RCW 80.28.025. In re Puget Sound Power & Light Company, Docket No. UE-910689 [incentives]; WUTC v. Puget Sound Power & Light Company, Docket No. UE-940728 [PRAM 4], Third Supplemental Order (September 1994); clarified, Fourth Supplemental Order (December 1994).

RCW 80.28.025 (cont.)

The Commission encourages parties to a proceeding involving the development, evaluation, and modification of an experimental regulatory mechanism to confer among themselves or with a designated person regarding the subject matter of the proceeding, and to report the results of their collaboration to the Commission. RCW 34.05.060; 80.28.025; WAC 480-09-465. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Secretary Letter Regarding PRAM Collaborative (April 1994).

The Commission may require reasonable accounting changes in continuing an experimental periodic rate adjustment mechanism. RCW 80.04.300; 80.28.025; WAC 480-100-031; 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

Under-recovery from one period of an experimental periodic rate adjustment mechanism may appropriately be deferred for recovery over a period of several years in order to promote rate stability. RCW 80.28.025; WAC 480-100-031; 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-930622, First Supplemental Order [PRAM 3 Order] (September 1993).

A periodic rate adjustment mechanism (PRAM) is an experimental regulatory mechanism intended to reduce barriers to least cost planning. A goal of the mechanism is that the public be able to see that aligning company profits with a least cost path results in least cost to the customers as well as

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revenue stability for the company. In furthering that goal, the Commission may approve reasonable accounting changes during the experiment. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-920630, Second Supplemental Order [granting expedited reconsideration] (October 1992).

Under an experimental periodic rate adjustment mechanism, when actual receipts do not match expected receipts because of abnormal conditions, deferral of recovery is proper, and the deferral should be recorded on the company's books at the time the abnormal conditions occur. RCW 80.28.020; 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-920630, Third Supplemental Order [clarifying order] (October 1992).

Under an experimental periodic rate adjustment mechanism (PRAM) intended to reduce barriers to least cost planning, the Commission may approve a settlement that provides a reasonable means to examine the issue of the cost effectiveness of conservation programs. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-920630, Third Supplemental Order (October 1992).

The Commission will make mid-course adjustments to an experimental periodic rate adjustment mechanism (PRAM) when it appears that the mechanism is failing to meet the criteria that the Commission has established to attain the goals of least cost planning. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-920630, First Supplemental Order [PRAM 2 order] (September 1992).

RCW 80.28.025 (cont.)

An experimental mechanism to attain the goals of least cost planning is flawed if it creates perverse economic incentives for the company. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-920630, First Supplemental Order [PRAM 2 order] (September 1992).

Under-recovery from one period of an experimental periodic rate adjustment mechanism may appropriately be deferred for recovery over a period of several years in order to promote rate stability. RCW 80.28.025; WAC 480-100-031; 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-920630, First Supplemental Order [PRAM 2 order] (September 1992).

Under a periodic rate adjustment mechanism, conservation costs should be accounted for in such a way that both the company and the ratepayer are made whole, so as to encourage least cost planning and conservation. RCW 80.28.020; 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-910626, Second Supplemental Order [denying reconsideration] (January 1992).

The Commission actively encourages the state's investor-owned utilities to meet demands for service

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with a least-cost resource mix including both generating resources and improvements in the efficient use of electricity, and requires the electric utilities it regulates to engage in least-cost planning. RCW 80.28.025; 80.28.260; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

The Commission pursues a regulatory structure that adequately aligns utilities' pursuit of profits with least cost planning. RCW 80.28.025; 80.28.260; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

To encourage least cost planning, the Commission pursues regulatory mechanisms that permit adjustment for changes in revenue and costs beyond a utility's control, permit purchased power cost recovery, permit conservation cost recovery, and provide incentives for least cost supply and demand-side acquisitions. RCW 80.28.025; 80.28.260; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

Any experiments in regulatory restructuring to reduce regulatory barriers to least cost planning should favor the utility's least cost plan being its most profitable path, and its most profitable path being its least cost path. RCW 80.28.025; 80.28.260; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

RCW 80.28.025 (cont.)

A utility's supply-side incentives should be structured to reward the company for acquiring purchased power at least cost. RCW 80.28.020; 80.28.260; RCW 80.28.025; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

A periodic rate adjustment mechanism should permit the adjustment of rates to reflect increased costs and to pass through savings to customers, while encouraging least cost planning and conservation. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-910626, First Supplemental Order [PRAM 1 order] (September 1991).

Initial review of new contracts included in a periodic rate adjustment mechanism proceeding does not foreclose the Commission's later full prudence review in a general rate case. RCW 80.28.020; 80.28.025. WUTC v. Puget Sound Power & Light Company, Docket No. UE-910626, First Supplemental Order [PRAM 1 order] (September 1991).

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Under a periodic rate adjustment mechanism, conservation costs should be accounted for in a manner that makes both the company and ratepayer whole, so as to encourage least cost planning and conservation. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-910626, First Supplemental Order [PRAM 1 order] (September 1991).

If an incentive program is approved as part of an experimental mechanism for least cost planning, the Commission will consider both rewards for positive behavior and disincentives for negative behavior to be integral parts of the incentive program. RCW 80.04.300; 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-901183-T; UE-901184-P, Third Supplemental Order [decoupling order] (April 1991).

To implement least cost planning as a significant policy goal, electric company tariffs should provide customers with appropriate price signals that encourage least cost planning. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-901183-T; UE-901184-P, Third Supplemental Order [decoupling order] (April 1991).

Experimental regulatory mechanisms intended to reduce barriers to least cost planning should attempt to assure that a utility's most profitable path is its least cost path. An experimental periodic rate adjustment mechanism will be evaluated on its ability to eliminate disincentives for acquisition of least-cost power supply and demand-side resources. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-901183-T; UE-901184-P, Third Supplemental Order [decoupling order] (April 1991).

An electric company may implement measures to decouple its revenues from sales on an experimental basis when the Commission finds that the measures will encourage conservation and least cost planning, will reduce incentives to pursue aims inconsistent with those goals, and are consistent with other regulatory requirements and policies. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-901183-T; UE-901184-P, Third Supplemental Order [decoupling order] (April 1991).

RCW 80.28.025 (cont.)

When an experimental periodic rate adjustment mechanism might result in over-earnings or under-earnings, it is appropriate, in order to protect both ratepayers and shareholders, for the Commission to authorize a banded rate of return. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-901183-T; UE-901184-P, Fourth Supplemental Order on Reconsideration (April 1991).

The Commission will consider a proposal for a modified regulatory procedure to review potential supply-side resources (e.g., purchase power contracts negotiated through a competitive bidding process) and demand-side resources. If there are compelling reasons to use such a procedure, the Commission may modify its policy that long-term resources should only be reviewed in general rate cases. RCW 80.28.025. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

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When a utility's program for low-income weatherization is not fully adequate to address the needs of the customers in the service territory, the Commission may direct the utility to file a weatherization program plan more like that of plans filed by other regional investor-owned utilities. RCW 80.28.025. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

In calculating gross revenue deficiency, a separate treatment is mandated by RCW 80.28.025 for weatherization program rate base elements. RCW 80.04.250; RCW 80.28.025. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

The Commission may require a public service company to develop, as part of its least cost service plan, an analysis of alternative ways of providing energy to customers at the least practical life cycle cost and treating investments in end use efficiency and new supply on an equal and balanced basis. The Commission may also require the company to consult with Commission staff in the design of the study and plan and to comply with specific instruction as to content, timing and reporting as specified by letter from the Commission Secretary. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

The Commission will accept a utility's recommended approach for computing the proper level of conservation investment in the rate base when the utility's adjustment is consistent with RCW 80.28.025, and it provides the utility the proper incentive for conservation investment. RCW 80.04.250; RCW 80.28.025. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

In calculating gross revenue deficiency, a separate treatment pursuant to RCW 80.28.025 is mandated for weatherization program rate base elements. RCW 80.04.250; RCW 80.28.025. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

RCW 80.28.030 Commission may order improved quality of commodity--Water companies, board of health standards.

While the Commission believes that health-related matters are better first presented to the jurisdictional health agency than upon referral by the Commission, it will not discourage the public from contacting the Commission, recognizing that persons with problems may not understand the jurisdictional areas of various state agencies. RCW 80.28.030. WUTC v. Pacific Beach Water, Inc., Docket No. U-86-57, Order on Review (February 1987).

RCW 80.28.050 Tariff schedules to be filed with commission--Public schedules.

RCW 80.04.130, which establishes the Commission's authority to suspend the rates of a water

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company that was removed from and later returned to Commission jurisdiction and to allow temporary rates, applies to a company that was subject to Commission jurisdiction during a previous period because it met minimum jurisdictional amounts set forth in RCW 80.04.010, but was not regulated by the Commission because it failed to file a tariff with the Commission during that period. RCW 80.04.010; RCW 80.04.130; RCW 80.28.050. WUTC v. G & W Aqua, Inc., Docket No. U-87-1089, Order Affirming Proposed Order Granting Motion to Suspend (September 1988).

RCW 80.28.074 Legislative declaration.

When canceling a gas utility's temporary service contracts would likely result in a large industrial user by-passing the local distribution service, the Commission on reconsideration may authorize continuation of service under the contracts -- despite the company's failure to file a banded rate in compliance with a previous order -- when review of the matter would occur in an approaching full rate case, and the Commission explicitly reserved the right to terminate the contracts prior to their expiration date. RCW 80.28.074. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126 and U-88-2127, Eighth Supplemental Order (January 1990).

A local natural gas distribution company whose revenue requirements are allocated between Washington and Oregon customers on the basis of volume of consumption, and whose large end-users could be linked directly with the producers' pipeline, must have Commission approval of proposed contracts that would provide an industrial rate as an alternative to by-pass. The contracts will be evaluated in light of the consequences for both states' customers who have no realistic competitive supply alternatives, as well as the potential consequences for other local distribution companies seeking an appropriate response to by-pass competition in Washington. RCW 80.28.020; RCW 80.28.074; WAC 480-80-335. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C and U-88-2127-C, Fourth Supplemental Order (May 1989).

A proposed contract for natural gas service that would provide an industrial rate as an alternative to by-pass, will be evaluated in light of the implications for the company's customers who have no realistic competitive supply alternatives, as well as the implications for other local distribution companies seeking an appropriate response to by-pass competition in Washington. RCW 80.28.020; RCW 80.28.074; WAC 480-80-335. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C and U-88-2127-C, Fourth Supplemental Order (May 1989).

The Commission will authorize reasonable economic and regulatory measures that discourage by-pass of local natural gas distribution companies, but major rate reductions to industrial customers in exchange for minor contributions to fixed costs will not be approved when they would improperly shift fixed costs to other utility customers. RCW 80.28.020; RCW 80.28.074. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C and U-88-2127-C, Fourth Supplemental Order (May 1989).

RCW 80.28.075 Banded rates--Natural gas and electric services.

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Both the banded rate statute, RCW 80.28.075, and the special contracts rule, WAC 480-80-335, are intended to be tools for gas companies to use in responding to competitive pressures. They are designed to encourage flexible pricing, a necessary step for the companies to meet competition and retain high volume customers. RCW 80.28.075; WAC 480-80-335. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-930511, Fourth Supplemental Order (April 1994).

Contracts for natural gas transportation that are created under a banded rate approach may provide a practical means to nullify some industrial customers' incentives to by-pass the utility delivery system and avoid contributing to common system costs. RCW 80.28.075; WAC 480-80-335. WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

A gas company may elect to enter into contracts that fall within a rate band if the company deems they meet the tests established by the Commission. The company's decision will be reviewed in the company's next general rate case based on the extent to which the rate meets those tests. The Commission does not pre-approve competitive sales contracts. RCW 80.28.075; 80.28.020; WAC 480-90-026. WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

Retaining a customer with bypass potential may be beneficial to the remaining customers of the system. A banded rate for nonresidential natural gas service that is subject to effective competition from energy suppliers not regulated by the Commission is a tool that allows the Commission to address the needs of customers whose bypass costs are less than the average cost for its customer class, but from whom payment of a rate less than average will still provide a contribution to the system. RCW 80.28.074; 80.28.075. WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

Criteria for determining whether competitive pricing is justifiable that will allow the Commission to meet the goals established by the legislature in the gas banded rate statute, RCW 80.28.074, include: (1) it should only be permitted if embedded cost exceeds marginal cost; (2) it should not be permitted unless other customers would get lower rates as a result; (3) it should not be permitted unless there is good evidence that the rate charged will cover long run marginal costs; and (4) it should be forbidden if it would seriously prejudice the competitive business relationships between the customers with favorable pricing and those without. RCW 80.28.074; 80.28.075; 80.28.020. WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

RCW 80.28.075 (cont.)

When pricing a service for customers with competitive alternatives, contracts must be considered on an individual basis, and the rate to be charged each customer determined in conjunction with an analysis of that customer's bypass option. Incremental cost differences, including those occurring because of proximity to interstate transmission facilities, afford a justifiable basis for distinguishing among customers within a classification. It is not necessary to accomplish this individual

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consideration by eliminating rate bands and requiring the filing of individual contracts. RCW 80.28.075. WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

Entry into a contract within a rate band will not automatically result in a revenue shift; establishing a rate band does not a priori decide that any revenue gap between the level that would have been received if fully-embedded rates were charged, and the level actually received under the contract, will be shifted to other customers. Review of a company's performance under a banded rate will occur as part of the company's next general rate case. There, the company will be required to demonstrate that it bargained effectively with customers who had competitive alternatives and that other customers will get lower rates as a result of retaining the potential bypass customers. RCW 80.28.075; 80.28.020; WAC 480-90-026. WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

The Commission may grant a utility's timely request for an extension of time for compliance with an order requiring it to file banded rate tariffs for service to industrial users presently served under temporary contracts, to allow the company to complete its cost study determining the rate floor under possible banded rates for the industrial users, while the Commission evaluates the company's tariff and document filing to determine whether they satisfy the requirements of the prior order. RCW 80.28.075. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C and U-88-2127-C, Order Granting Extension (November 1989).

Contracts for natural gas transportation that are created under a banded rate approach may provide a practical means to nullify some industrial customers' incentives to by-pass the utility delivery system and avoid contributing to common system costs. RCW 80.28.075; WAC 480-80-335. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C and U-88-2127-C, Fourth Supplemental Order (May 1989).

A local distribution company that is faced with the possibility of by-pass by industrial customers will not be prohibited from selling natural gas or its transportation at a price below any new banded rate so long as any discounts are made under contracts approved by the Commission, provided in the context of the banded rate statute, and any cost or resulting revenue shortfall is borne by the company's shareholders. RCW 80.28.075; WAC 480-80-335. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C and U-88-2127-C, Fourth Supplemental Order (May 1989).

Possible revenue shortfalls caused by a banded rate approach will be dealt with in a gas company's next general rate filing or subsequent rate cases. RCW 80.28.020; RCW 80.28.075. WUTC v. Washington Water Power Co., Docket No. U-87-1532-T, Second Supplemental Order (September 1988).

RCW 80.28.075 (cont.)

A banded rate may be appropriate for industrial natural gas service that is subject to effective competition. A banded rate gives a utility flexibility in meeting the demands of a competitive market

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while affording protection to captive customers from unreasonable charges. RCW 80.28.075. WUTC v. Washington Water Power Co., Docket No. U-87-1532-T, Second Supplemental Order (September 1988).

If it approves a banded rate tariff for industrial gas service that is subject to effective competition, the Commission will review the gas company's performance under the banded rate approach as part of the company's next general rate case, and will expect the company to demonstrate that it has bargained effectively and has made substantial efforts to realign its supply portfolio consistent with a least cost supply plan, and to shed pipeline fixed costs rather than passing them on to captive customers. RCW 80.28.020; RCW 80.28.075. WUTC v. Washington Water Power Co., Docket No. U-87-1532-T, Second Supplemental Order (September 1988).

RCW 80.28.080 Published rates to be charged--Exceptions.

Using historical data in setting future rates based on equitable grounds does not constitute retroactive ratemaking. RCW 80.28.020; 80.28.080. Intalco Aluminum Corporation, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911477; Weyerhaeuser Company, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911481; WUTC v. Cascade Natural Gas Corporation, Docket No. UG-920062; Fourth Supplemental Order (December 1992).

RCW 80.28.110 Service to be furnished on reasonable notice.

RCW 80.28.110 does not require that a regulated electric utility provide electric service upon request to a potential customer whose site is partly within the regulated utility's service area and whose point of delivery for permanent electric service has been placed within the regulated utility's service area, when the remainder of the site is within the service area of another electric utility, all of the customer's existing buildings are within the service area of the other utility, the other utility is already providing temporary electric service to the customer, and the other utility provides service pursuant to a valid Service Area Agreement. RCW 80.28.110. In re Tanner Electric Company, Docket No. UE-901596, Declaratory Order (March, 1991); recon. denied, First Supplemental Order (April 1991).

RCW 80.28.190 Gas companies--Certificates--Violations--Commission powers--Penalty - Fees.

The Commission will not allow the installation of a 450 p.s.i.g. gas pipeline within 100 feet of a building intended for human occupancy, when a high pressure gas line is not necessary to supply the gas needed, and when the operation of a high pressure gas line is not prudent for safety reasons. RCW 80.28.210; WAC 480-93-030. In re Washington Natural Gas Co., Docket No. UG-900520 (August 1990).

RCW 80.28.190 (cont.)

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The Commission may extend the service area of a Gas Plant for Hire to an additional contiguous area, in which company gas mains and customers are located, when the extension will satisfy the public convenience and necessity. The reasonableness of services, expenditures, and their treatment, however, must be resolved in subsequent proceedings. RCW 80.28.020; RCW 80.28.190. In re Washington Natural Gas Co., Docket No. U-89-3448-G (January 1990).

RCW 80.28.200 Gas companies--Refunds of charges.

A proceeding under RCW 80.28.200 is not a "tracker." The Commission may, in its discretion, use a tracker-type mechanism to allocate a refund in a proceeding under RCW 80.28.200. Its use of a tracker-type mechanism and use of the word "tracker" in an RCW 80.28.200 proceeding does not mean that anyone is "entitled" to a pass through of cost decreases. Intalco Aluminum Corporation, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911477; Weyerhaeuser Company, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911481; WUTC v. Cascade Natural Gas Corporation, Docket No. UG-920062; Seventh Supplemental Order (February 1993).

The Commission may allocate or not allocate all or part of a refund that a local gas distribution company receives from a pipeline company under a Federal Energy Regulatory Commission (FERC) order in any manner and to any extent that the Commission finds just and reasonable. RCW 80.28.200. Intalco Aluminum Corporation, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911477; Weyerhaeuser Company, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911481; WUTC v. Cascade Natural Gas Corporation, Docket No. UG-920062; Fourth Supplemental Order (December 1992), upheld, Arco Products Co., et al. v. WUTC et al., Washington Supreme Court February 9, 1995.

No customer of a regulated gas company has a vested right to any portion of a refund that the local gas distribution company receives from a pipeline company under a FERC order until and unless the Commission so orders, after a finding that such an allocation is just and reasonable. RCW 80.28.200. Intalco Aluminum Corporation, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911477; Weyerhaeuser Company, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911481; WUTC v. Cascade Natural Gas Corporation, Docket No. UG-920062; Fourth Supplemental Order (December 1992), upheld, Arco Products Co., et al. v. WUTC et al., Washington Supreme Court February 9, 1995.

In allocating a refund that a local gas distribution company receives from a pipeline company under a FERC order, the ultimate issue for the Commission to decide is what is just and reasonable. RCW 80.28.200. Intalco Aluminum Corporation, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911477; Weyerhaeuser Company, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911481; WUTC v. Cascade Natural Gas Corporation, Docket No. UG-920062; Fourth Supplemental Order (December 1992), upheld, Arco Products Co., et al. v. WUTC et al., Washington Supreme Court February 9, 1995.

Savings associated with the reduced cost of transporting purchased gas should be deferred and refunded to ratepayers, consistent with the principles of tracking actual gas costs and with the company's filed tariffs. A company does not have the discretion to retain the savings. RCW 80.28.200. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Third Supplemental Order (October 1989).

RCW 80.28.210 Safety Rules - Pipeline transporters - Penalty.

The Commission will rescind authority to construct and operate a gas pipeline when Commission inspection shows that pipe and joints lack specification markings that would allow the Commission to make a safety determination. RCW 80.28.210; WAC 480-93-017. In re ARCO Western Gas Pipeline Co., Docket No. 900878, Emergency Adjudicative Proceeding (August 1990).

When a natural gas company has taken steps to document that all pipes and joints meet minimum state and federal safety requirements for the maximum allowable operating pressure for which such materials were designed, and thus public safety concerns addressed in an emergency order have been resolved, the Commission may accept a proposed settlement agreement and allow the company to resume construction of its pipeline. RCW 80.28.210; WAC 480-93-010. WUTC v. ARCO Western Gas Pipeline Co., Docket Nos. 900878, UG-900883-F (August 1990).

RCW 80.28.260 Adoption of policies to provide financial incentives for energy efficiency programs.

Cross References

- See also RCW 80.28.025 (Encouragement of energy cogeneration, conservation, production from renewables).

The Commission actively encourages the state's investor-owned utilities to meet demands for service with a least-cost resource mix including both generating resources and improvements in the efficient use of electricity, and requires the electric utilities it regulates to engage in least-cost planning. RCW 80.28.025; 80.28.260; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

The Commission pursues a regulatory structure that adequately aligns utilities' pursuit of profits with least cost planning. RCW 80.28.025; 80.28.260; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

To encourage least cost planning, the Commission pursues regulatory mechanisms that permit adjustment for changes in revenue and costs beyond a utility's control, permit purchased power cost recovery, permit conservation cost recovery, and provide incentives for least cost supply and demand-side acquisitions. RCW 80.28.025; 80.28.260; WAC 480-100-251. In re Puget Sound

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Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

RCW 80.28.260 (cont.)

Any experiments in regulatory restructuring to reduce regulatory barriers to least cost planning should favor the utility's least cost plan being its most profitable path, and its most profitable path being its least cost path. RCW 80.28.025; 80.28.260; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

A utility's supply-side incentives should be structured to reward the company for acquiring purchased power at least cost. RCW 80.28.020; 80.28.260; RCW 80.28.025; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

A policy objective of RCW 80.28.260 is to encourage investments in energy efficiency programs targeting senior citizens and low-income ratepayers. WUTC v. Puget Sound Power & Light Company, Docket No. UE-910626, First Supplemental Order [PRAM 1 order] (September 1991).

RCW 80.28.280 Compressed natural gas--Refueling stations--Identify barriers.

RCW 80.28.280 does not allow a direct subsidy of compressed natural gas refueling stations by customer classes that are not CNG purchasers. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Third Supplemental Order (March 1993).

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RCW 80.36.080 Rates, services, and facilities.

Cross references

- Commission to fix rates and services: See RCW 80.36.140.

The Commission may authorize a local exchange company to become the primary toll carrier ("PTC") for intraLATA toll traffic originating in its service territory when the company accepts responsibility for all such toll traffic, including private line service, at the time it becomes a PTC. RCW 80.36.080; 80.36.160. WUTC v. GTE Northwest Incorporated, Docket Nos. UT-921462 & UT-921463; WUTC v. Contel of the Northwest Inc., Docket Nos. UT-921464 & UT-921465, Fifth Supplemental Order (June 1994).

A local exchange company that elects to become the primary toll carrier ("PTC") for intraLATA toll traffic originating in its service territory must accept responsibility for all such toll traffic, including private line service, at the time it becomes a PTC. RCW 80.36.080; 80.36.160. WUTC v. GTE Northwest Incorporated, Docket Nos. UT-921462 & UT-921463; WUTC v. Contel of the Northwest Inc., Docket Nos. UT-921464 & UT-921465, Third Supplemental Order (January 1994).

Rate bands and maximum and minimum rates that are unjust, unfair, and unreasonable in contravention of RCW 80.36.080 and are inconsistent with the banded rate policy set forth in the Second Supplemental Order in Cause U-86-40 will be rejected. RCW 80.36.080; 80.36.340. WUTC v. U S WEST Communications, Docket No. UT-911379, Order Adopting Settlement Agreement (March 1992).

Rate bands are an appropriate subject for Commission rulemaking, and rulemaking is the preferred means of addressing rate band tariffing so that the rules will be applicable to all companies and to all relevant services. RCW 80.36.080; 80.36.340. WUTC v. U S WEST Communications, Docket No. UT-911379, Order Adopting Settlement Agreement (March 1992).

A stipulated tariff settlement that requires a developer to either pay an advance charge and assume certain responsibilities relating to telephone service to undeveloped subdivisions or be liable for the full cost of construction is in the public interest because it shifts the risk associated with plant investment in undeveloped subdivisions from the general ratepayers to the developer. RCW 80.36.080; WAC 480-09-465. WUTC v. U S WEST Communications, Docket No. UT-901219, Second Supplemental Order (May 1991).

A reduction in revenues that does not cause a utility to earn less than its authorized rate of return is insufficient to relieve the company of its obligation under a prior order to file tariffs reducing its intrastate access revenues. RCW 80.36.080. In re General Telephone Co. of the Northwest; Docket No. U-86-130, Fourth Supplemental Order (March 1989).

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RCW 80.36.080 (cont.)

The Commission will dismiss, after hearing, a customer's complaint alleging overbilling by a utility when the evidence shows that the customer's allegations are incorrect and that the utility's calculation of charges owed is correct. RCW 80.04.110; RCW 80.36.080; WAC 480-120-106. Abode Realty v. Telephone Utilities of Washington, Docket No. U-86-116, Order Affirming Proposed Order and Dismissing Complaint (December 1987).

When the effect of a change in the federal tax laws will not cause a public service company to exceed its authorized rate of return, no tariff reduction needs to be filed. RCW 80.28.010; RCW 80.36.080. In re Requirement ... to Report ... Impact of Revisions of the Federal Tax Code, Docket No. U-86-130, First Supplemental Order (April 1987), corrected, Second Supplemental Order (April 1987).

RCW 80.36.090 Service to be furnished on demand.

A telecommunications company may restrict a service offering only consistently with the law and with the Commission's approval of the consequences. RCW 80.36.090. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-911488, UT-911490, & UT-920252 (Consolidated), Fourth Supplemental Order (November 1993).

A telephone company tariff allowing public safety agency access to database information about non-published numbers only when a call is placed to an emergency number would not allow reverse line inquiry access regarding the non-published number in the absence of an emergency call from the non-published number. RCW 80.36.090; WAC 480-120-042. In re U S WEST Communications, Inc., Docket No. UT-910785, Declaratory Order (October 1991).

A non-residential telecommunications customer that is delinquent is not reasonably entitled to additional service until it demonstrates satisfactory credit. RCW 80.36.090; WAC 480-120-056(1). Professional Business Services, Inc. v. U S WEST Communications, Docket No. UT-900162, Order Denying Complaint (April 1991).

RCW 80.36.100 Tariff schedules to be filed and open to public.

Approval of a tariff filing's proposed extended area service (EAS) routes without a rate schedule would violate RCW 80.36.100 and WAC 480-120-026, and would be in conflict with the Commission's EAS rule, WAC 480-120-405. WUTC v. Toledo Telephone Company, Inc., Docket No. UT-921259, Fourth Supplemental Order (September 1993).

A telecommunications company is not excused from filing with the Commission simply because it has already filed in a foreign country tariffs with and is regulated by authorities in a foreign nation. RCW 80.01.040; RCW 80.36.100. WUTC v. Whidbey Telephone Co., Docket No. U-85-50; In re Telephone Service to the Point Roberts Area, Docket No. U-86-51; and In re Hallicrafters Equipment Company (Canada), Docket No. U-86-30; Second Supplemental Order (June 1986).

RCW 80.36.130 Published rates to be charged--Exceptions.

Tariffs need not include specific language to authorize corrections due to reporting errors because law requires those corrections. RCW 80.36.130; WAC 480-120-026. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a Amnet, Docket No. U-86-43, Seventh Supplemental Order (March 1988).

RCW 80.36.135 Alternative regulation of telecommunications companies.

Cross reference:

- See RCW 80.36.300, Policy declaration.

In allocating the ratepayers' share of excess revenues under an alternative incentive regulatory framework, the Commission will consider, among other factors, whether a proposed sharing option will have a positive impact on a broad range of services, offering the widest distribution opportunities for excess revenues to the most ratepayers. RCW 80.36.135(3). WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S WEST Communications, Docket No. U-89-2698-F; In re Pacific Northwest Bell Telephone Co. d/b/a U S WEST Communications, Inc., Docket No. U-89-3245-P (Consolidated), Twenty-first Supplemental Order (November 1993).

The Commission may rescind its approval of an alternative form of regulation (AFOR) that does not continue to satisfy the statutory conditions set forth in RCW 80.36.135(3), or may offer modifications that will permit the AFOR to satisfy the statutory conditions necessary to its continuation. RCW 80.36.135; 80.36.300. WUTC v. Pacific Northwest Bell Telephone Co., d/b/a U S WEST Communications, Inc., Docket Nos. U-89-2698-F & U-89-3245-P (Consolidated), Nineteenth Supplemental Order (September 1993).

A telecommunications company that the Commission has permitted to operate under an alternative form of regulation (AFOR) has the burden of proof in a proceeding to review the current AFOR to prove that the AFOR continues to satisfy the statutory criteria in RCW 80.36.135(3). RCW 80.36.135; 80.36.300. WUTC v. Pacific Northwest Bell Telephone Co., d/b/a U S WEST Communications, Inc., Docket Nos. U-89-2698-F & U-89-3245-P (Consolidated), Nineteenth Supplemental Order (September 1993).

An alternative form of regulation should be approved if it is shown to be better than traditional rate-of-return regulation at preventing monopoly abuse, ensuring that customers benefit from industry cost reductions, and meeting important social goals such as universal service. RCW 80.36.135; 80.36.300. WUTC v. Pacific Northwest Bell Telephone Co., d/b/a U S WEST Communications, Inc., Docket Nos. U-89-2698-F & U-89-3245-P (Consolidated), Nineteenth Supplemental Order (September 1993).

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RCW 80.36.135 (cont.)

An alternative form of regulation that tends to reward the company excessively for efficiencies that are easiest to achieve, while providing inadequate incentives to pursue larger productivity increases, does not satisfy the statutory criteria in RCW 80.36.135(3). RCW 80.36.135; 80.36.300. WUTC v. Pacific Northwest Bell Telephone Co., d/b/a U S WEST Communications, Inc., Docket Nos. U-89-2698-F & U-89-3245-P (Consolidated), Nineteenth Supplemental Order (September 1993).

The Commission encourages parties to a proceeding for allocation of ratepayers' share of excess revenue to present a broad range of creative options consistent with the public interest. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S WEST Communications, Docket No. U-89-2698-F; In re Pacific Northwest Bell Telephone Co. d/b/a U S WEST Communications, Docket No. U-89-3245-P, Fifth Supplemental Order (August 1991).

In allocating the ratepayers' share of excess revenues under an alternative incentive regulatory framework, the Commission will consider, among other factors, whether the distribution provides the broadest benefits for ratepayers, and whether it balances the immediate benefit with the long term benefit. RCW 80.36.135(3). WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S WEST Communications, Docket No. U-89-2698-F; In re Pacific Northwest Bell Telephone Co. d/b/a U S WEST Communications, Docket No. U-89-3245-P (Consolidated), Sixteenth Supplemental Order (October 1992).

Excess revenue for ratepayer benefit under an incentive regulation plan will be allocated among available options based upon legality; consistency with governing orders and agreements; long and short term ratepayer benefit; and equity among ratepayers. RCW 80.01.040; 80.36.135. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S WEST Communications, Docket No. U-89-2698-F; In re Pacific Northwest Bell Telephone Co. d/b/a U S WEST Communications, Docket No. U-89-3245-P, Fifth Supplemental Order (August 1991).

A company operating under an incentive regulation plan will be expected to identify the sources of excess revenues and demonstrate efficiencies and productivity improvements that gained the revenue, prior to renewal of the incentive regulation plan. RCW 80.36.140; 80.36.300. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S WEST Communications, Docket No. U-89-2698-F; In re Pacific Northwest Bell Telephone Co. d/b/a U S WEST Communications, Docket No. U-89-3245-P, Fifth Supplemental Order (August 1991).

The Commission will evaluate each proposal for an alternative regulatory framework on its own merits, reviewing the details in such depth as the circumstances require. An analysis of the company's revenue requirements is essential to consideration of an alternative regulation plan. RCW 80.36.135. In re GTE Northwest, Inc., Docket No. U-89-3031-P, Third Supplemental Order (August 1990).

RCW 80.36.135 (cont.)

A proposed alternative regulatory plan that fails to review the company's revenue requirements presents insufficient information to allow the Commission to decide whether the plan would provide fair, just and reasonable rates for all ratepayers. RCW 80.36.135. In re GTE Northwest, Inc., Docket No. U-89-3031-P, Second Supplemental Order (July 1990).

Approval of a proposed alternative regulatory plan is contingent upon the Commission's finding that the plan meets each of the policy goals established by the Legislature in RCW 80.36.135(3). RCW 80.36.135. In re GTE Northwest, Inc., Docket No. U-89-3031-P, Second Supplemental Order (July 1990).

The Commission's ultimate concerns in judging alternative regulation proposals are whether they serve the public interest and would generate real benefits for consumers. RCW 80.36.135; RCW 80.36.300. In re GTE Northwest, Inc., Docket No. U-89-3031-P, Second Supplemental Order (July 1990).

The Commission's ultimate criteria in judging an alternative regulation proposal are whether the plan serves the public interest and whether it generates real benefits for consumers. Each proposal will be evaluated on its own merits, beginning with a re-examination of the company's revenue requirements. RCW 80.36.135. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S West Communications, Docket No. U-89-2698-F, Pacific Northwest Bell Telephone Co. d/b/a U.S. West Communications, Docket No. U-89-3245-P (Consolidated) Fourth Supplemental Order (January 1990).

Permanent ratepayer benefits can result from implementing an alternative form of regulation that incorporates rate restructuring and service improvement options with Commission control over the allocation of the ratepayers' share of excess earnings. RCW 80.36.135. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S West Communications, Docket No. U-89-2698-F, Pacific Northwest Bell Telephone Co. d/b/a U.S. West Communications, Docket No. U-89-3245-P (Consolidated) Fourth Supplemental Order (January 1990).

The Commission will approve an alternative form of regulation for a telecommunications company if it is shown to be better than traditional rate-of-return regulation at preventing monopoly abuse, ensuring that customers benefit from industry cost reductions, and meeting important social goals such as universal service. RCW 80.36.135. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S West Communications, Docket No. U-89-2698-F, Pacific Northwest Bell Telephone Co. d/b/a U.S. West Communications, Docket No. U-89-3245-P (Consolidated) Fourth Supplemental Order (January 1990).

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RCW 80.36.135 (cont.)

The Commission may approve a telephone company's proposed temporary alternative plan of regulation when the interim effects would be closely monitored, provided that the plan meets statutory criteria, provides unique ratepayer protections, and meets the Commission objectives of providing fair rates while controlling monopoly power. RCW 80.36.135. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S West Communications, Docket No. U-89-2698-F, Pacific Northwest Bell Telephone Co. d/b/a U.S. West Communications, Docket No. U-89-3245-P (Consolidated) Fourth Supplemental Order (January 1990).

RCW 80.36.130 specifically provides that a telecommunications company must charge its tariff rates for services rendered. When an erroneous billing or report has been made, the regulated provider must rebill or refund to conform with the tariff. RCW 80.36.130. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a Amnet, Docket No. U-86-43, Seventh Supplemental Order (March 1988).

In a billing dispute, failure of the local dominant toll carrier for intraLATA traffic to provide a correct and timely local calling area report to an interexchange carrier does not excuse the interexchange carrier's failure to make payments to the dominant carrier; withholding of payment violates the requirement under RCW 80.36.130 that the full tariff be billed and paid for services rendered. RCW 80.04.110; RCW 80.36.130; WAC 480-120-101. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a Amnet, Docket No. U-86-43, Seventh Supplemental Order (March 1988).

RCW 80.36.140 Rates and services fixed by commission, when.

Cross references

- Rates under alternative regulation plan: See also RCW 80.36.135.
- Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.
- Alternative regulation of telecommunications companies: See RCW 80.36.135.

In a rate of return case, the Commission first determines the appropriate capital structure, including the amount of common and preferred equity and the amount of short and long term debt. This analysis generally considers issues of economy and safety. The Commission then determines the appropriate cost rates for each component, balancing the considerations of a fair rate of return for shareholders and protection of ratepayers' interests. RCW 80.36.140. In re GTE Northwest Incorporated, Docket No. UT-931591, Third Supplemental Order (December 1994).

In a Commission determination of a utility's appropriate rate of return in a rate case, the return to investors should be commensurate with returns on other investments having corresponding risks. The return should assure investors' confidence in the financial integrity of the utility, enable the

company to operate successfully, and permit it to attract capital on reasonable terms. RCW 80.36.140. In re GTE Northwest Incorporated, Docket No. UT-931591, Third Supplemental Order (December 1994).

RCW 80.36.140 (cont.)

The Commission will continue to rely on the discounted cash flow analysis as the most satisfactory method of measuring investor expectation. RCW 80.36.140. In re GTE Northwest Incorporated, Docket No. UT-931591, Third Supplemental Order (December 1994).

Absent any public policy concerns, tariffed services that are functionally and technically equivalent should generally be priced the same. RCW 80.36.140; 80.36.170; 80.36.180. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-930957, UT-931055, & UT-931058 (Consolidated), Fourth Supplemental Order (September 1994); affirmed and clarified, Fifth Supplemental Order (December 1994).

The price of a telecommunications service should cover long-run incremental costs, plus a reasonable contribution. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-930957, UT-931055, & UT-931058 (Consolidated), Fourth Supplemental Order (September 1994); affirmed and clarified, Fifth Supplemental Order (December 1994).

When competitors do not have access to a local exchange company's directory assistance data base, directory assistance is not a competitive service. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-930957, UT-931055, & UT-931058 (Consolidated), Fourth Supplemental Order (September 1994); affirmed and clarified, Fifth Supplemental Order (December 1994).

The Commission will authorize a telecommunications company to provide competing private line inter-/intra-exchange telecommunications services, and switched intra-exchange services, in an exchange, when the company has shown that it is financially and technically capable to provide the services proposed. RCW 80.36.140; 80.36.230. In re Tel-West Central Services, Inc., Docket No. UT-940647 (June 1994).

The Commission may order a local exchange company, as a pre-condition to Commission authorization to become a primary toll carrier, to file an approved uniform switched access tariff with the Commission. RCW 80.36.140. WUTC v. GTE Northwest Incorporated, Docket Nos. UT-921462; UT-921463; UT-921464; UT-921465, Fourth Supplemental Order (April 1994).

For determining a local exchange carrier's ("LEC") rates for toll service, the Commission requires that the cost of essential, monopoly services that a competitor also must use, be imputed at the tariffed rate. The Commission does not require that the cost of services that have been classified by Commission order as "competitive" be "imputed", but the LEC should include in the price floor of its toll service the actual cost of competitive elements used in its provision of service. RCW 80.36.140; 80.36.180. WUTC v. GTE Northwest Incorporated, Docket Nos. UT-921462 & UT-921463; WUTC v. Contel of the Northwest Inc., Docket Nos. UT-921464 & UT-921465, Third

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Supplemental Order (January 1994).

RCW 80.36.140 (cont.)

The Commission generally requires a long-run incremental cost study ("LRIC") to support cost figures for competitive elements of toll services. RCW 80.36.140. WUTC v. GTE Northwest Incorporated, Docket Nos. UT-921462 & UT-921463; WUTC v. Contel of the Northwest Inc., Docket Nos. UT-921464 & UT-921465, Third Supplemental Order (January 1994).

Access charges are to be imputed to toll services based upon the type of access service utilized in actually providing the service. RCW 80.36.140. WUTC v. GTE Northwest Incorporated, Docket Nos. UT-921462 & UT-921463; WUTC v. Contel of the Northwest Inc., Docket Nos. UT-921464 & UT-921465, Third Supplemental Order (January 1994).

The Commission has the responsibility to ensure that a local exchange telecommunications company does not use ratepayer investment to perform competitive services without recovering pertinent costs. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-911488, UT-911490, & UT-920252 (Consolidated), Fourth Supplemental Order (November 1993).

The Commission may deny a petition for a notice of inquiry to consider the intrastate impact of impending changes in interstate rates if rules or Commission policies that may be needed to deal with the impending changes can be developed in the context of a tariff filing. RCW 80.01.040. In re Interexchange Access Coalition, Docket No. UT-931029 (October 1993).

The Commission may accept a stipulated settlement authorizing tariff revisions if the settlement is reasonable, just and fair, is consistent with applicable federal regulations, and its acceptance is in the public interest. RCW 34.05.060; 80.36.140; WAC 480-09-465. WUTC v. U S WEST Communications, Docket No. UT-920474, Third Supplemental Order (May 1993). [Here, the proposed tariff revisions are designed to establish a tariff for the maintenance and provisioning options available to property owners for intra-building network cable and network terminating wire.]

Generally, the Commission will not engage in single issue or "piecemeal" ratemaking; approval of a change in a company's depreciation methodology between rate cases, without considering other aspects of the company's rate structure, would amount to single issue ratemaking. RCW 80.04.300; 80.04.350; 80.36.140. In re U S WEST Communications, Inc., Docket No. UT-920085, Third Supplemental Order (April 1993).

The Commission may waive the requirements of a Commission rule when it is not technically feasible for a company to provide service in the manner previously presented to and approved by the Commission. RCW 80.01.040; 80.36.140. In re U S WEST Communications, Inc., Docket No. UT-920018 (September 1992).

A Commission order accepting a settlement agreement stipulating the approval of affiliated interest agreements, as being in the best interest of the ratepayers and the companies, does not necessarily constitute Commission approval of rates set forth in the settlement agreement. RCW 34.05.060; 80.36.140; WAC 480-09-465. In re GTE Northwest Incorporated and Contel of the Northwest, Inc., Docket No. UT-910499, Second Supplemental Order (September 1992).

RCW 80.36.140 (cont.)

The Commission may base its approval of a settlement agreement in part on representations of a party that it will make specified service improvements by a specific date. RCW 34.05.060; 80.36.140; WAC 480-09-465. In re GTE Northwest Incorporated and Contel of the Northwest, Inc., Docket No. UT-910499, Second Supplemental Order (September 1992).

A per-call location surcharge fee paid to a location provider by an alternate operator service ("AOS") company is an expense of doing business that the Commission may review before the Commission authorizes a tariff for its collection from consumers. RCW 80.36.140; 80.36.522. WUTC v. Payline Systems, Inc., d/b/a Oasis, Docket No. UT-911250, Second Supplemental Order (July 1992).

The Commission will not approve a location surcharge without a demonstration that the surcharge is required to meet reasonable costs of providing the service. Location surcharges are not just or reasonable to the extent they exceed reasonable costs associated with providing the location. RCW 80.04.130; 80.36.140; 80.36.522. WUTC v. Payline Systems, Inc., d/b/a Oasis, Docket No. UT-911250, Second Supplemental Order (July 1992).

The Commission may determine whether any expenditures made by a regulated utility are fair, reasonable, and commensurate with the service, material, supplies or equipment received. RCW 80.36.140. WUTC v. Payline Systems, Inc., d/b/a Oasis, Docket No. UT-911250, Second Supplemental Order (July 1992).

The Commission may disallow expenses that are undertaken imprudently by public utilities to the detriment of consumers and may reject tariffs that would collect revenues to fund disallowed expenses. RCW 80.36.140. WUTC v. Payline Systems, Inc., d/b/a Oasis, Docket No. UT-911250, Second Supplemental Order (July 1992).

A carrier seeking a rate increase is not treated unfairly when it is denied a tariff that is unfair and unreasonable although other carriers secured analogous tariffs prior to the Commission's ability to review or prevent the tariffs upon registration. RCW 80.36.140. WUTC v. Payline Systems, Inc., d/b/a Oasis, Docket No. UT-911250, Second Supplemental Order (July 1992).

The leasing of telecommunications facilities (in this case, dark fiber) to a subsidiary telecommunications company by a corporate parent, when the parent does not hold out the provision of such facilities to the general public, does not by itself make the corporate parent subject to regulation under chapter 80.36 RCW. RCW 80.04.010; 80.36.140. In re Digital Direct Of Seattle, Inc., Docket Nos. UT-910776 & UT-910777, Fourth Supplemental Order (April 1992).

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In developing a framework for setting the rates, terms and conditions by which a specific company provides utility services, the Commission may proceed on a case by case basis or may develop principles and guidelines in a rulemaking proceeding. RCW 80.01.040; 80.36.140. WUTC v. U S WEST Communications, Docket No. UT-901006, Second Supplemental Order (August 1991).

RCW 80.36.140 (cont.)

The Commission may find proposed rates for services to be fair, just, reasonable and sufficient, as a matter of first impression, without a need for previous determinations on the definition, pricing, and offering of the services. RCW 80.36.140. WUTC v. U S WEST Communications, Docket No. UT-901006, Second Supplemental Order (August 1991).

The Commission will accept a stipulated settlement in a rate case when it finds that the settlement is reasonable and just and that its acceptance is in the public interest. RCW 80.36.140. WUTC v. U S WEST Communications, Docket No. UT-901219, Second Supplemental Order (May 1991).

The Commission will grant an application for a tariff change that includes authority to incorporate certain unassigned territory, when costs and charges comply with Commission guidelines and map revisions are consistent with the public interest. RCW 80.04.130; RCW 80.36.140; RCW 80.36.230. In re Cowiche Telephone Co., Docket No. UT-900720, Order Granting Application (December 1990).

The Commission has no jurisdiction to determine whether oral representations made to a telecommunications service reseller by an interexchange company constitute an enforceable contract. RCW 80.01.040; 80.36.140. Metro-Net Services Corp. v. U.S. West Communications, Docket No. U-88-2417-F, Third Supplemental Order (May 1990).

Persons who use interexchange network facilities should pay for that use. The Commission should not allow subscribers to an EAS bridging service such as US Metrolink to receive the service without paying for the network facilities; otherwise, the related costs would be passed along to all customers in the form of higher local rates. RCW 80.36.140. GTE Northwest, Inc. and WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U.S. West Communications, Docket Nos. U-88-1719-F and U-89-3175-T, Third Supplemental Order (May 1990).

A stipulated settlement that offsets excess earnings with a reasonable revenue reduction and structures a fair distribution of those reductions -- including provisions that change toll timing and reduce access charges -- is in the public interest because it shares benefits from the company's excess earnings with ratepayers and toll customers without imposing an adverse effect upon any customer class. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S West Communications, Docket No. U-89-2698-F, Pacific Northwest Bell Telephone Co. d/b/a U.S. West Communications, Docket No. U-89-3245-P (Consolidated) Fourth Supplemental Order (January 1990).

The Commission may approve an imputation test for determining the appropriate price for a local exchange carrier's monopoly services that a competitor also must use. RCW 80.36.140; RCW 80.36.180. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-87-1083-T, Fifth Supplemental Order (May 1988).

RCW 80.36.140 (cont.)

The Commission's acceptance of initial rates for service does not constitute acceptance by the Commission of every principle that may underlie those rates. RCW 80.36.140. WUTC v. Whidbey Telephone Co., Docket No. U-86-105; In re Inter-Island Telephone Co., Inc., Docket No. U-86-132; In re Point Roberts Telecommunications, Inc., Docket No. U-86-134 (Consolidated), Order Denying Exceptions (June 1987).

The Commission will not allow tariffs to be effective for which no service is intended to be provided. RCW 80.36.140. WUTC v. Whidbey Telephone Co., Docket No. U-86-105; In re Inter-Island Telephone Co., Inc., Docket No. U-86-132; In re Point Roberts Telecommunications, Inc., Docket No. U-86-134 (Consolidated), Order Denying Exceptions (June 1987).

The Commission has long held the opinion that most, if not all, net revenues from yellow pages properly belong to the monopoly ratepayers. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-52, Ninth Supplemental Order (May 1987).

The Commission may direct a public service company with reduced access costs resulting from tax rate reductions under the Federal Tax Reform Act of 1986 to file a report identifying the projected impact of these tax rate reductions on company operations. RCW 80.01.040; RCW 80.36.140. In re Requirement ... to Report ... Impact of Revisions of the Federal Tax Code, Docket No. U-86-130, First Supplemental Order (April 1987), corrected, Second Supplemental Order (April 1987).

The Commission's ultimate determination is whether the rates and charges proposed in revised tariffs are fair, just, reasonable, and sufficient. RCW 80.36.140. In re Pacific Northwest Bell Telephone Co., Docket Nos. U-86-34, U-86-35, U-86-36, & U-86-86; WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-90, Fourth Supplemental Order (April 1987).

Although the Commission may accept a telecommunications company's tariff filings, this decision should not necessarily be construed to indicate acceptance by the Commission of the methodologies of cost studies used by the company. RCW 80.36.140. In re Pacific Northwest Bell Telephone Co., Docket Nos. U-86-34, U-86-35, U-86-36, & U-86-86; WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-90, Fourth Supplemental Order (April 1987).

The Commission will reject a telecommunications company's proposal to offer a measured trunk class of service when the service has potential for discrimination among users that is without

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justification either on a value of service or cost of service basis. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-33, First Supplemental Order (January 1987).

A reasonable allocation of non-traffic sensitive (NTS) access costs (for access to the local switch) among carriers and their customers is 50 percent to local exchange services, 25 percent to interstate toll, and 25 percent to intrastate toll, with certain exceptions and with implementation on a gradual basis. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Eighteenth Supplemental Order (December 1986).

RCW 80.36.140 (cont.)

Local exchange companies may (but are not required to) file tariffs to charge consumers for the carrier common line charge (CCLC) that differentiate between the charge for initiating and terminating access as has been adopted by the Federal Communications Commission. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Eighteenth Supplemental Order (December 1986).

The Commission will require adequate justification before it authorizes use of contracts for billing and collection rather than tariffs. RCW 80.36.140; WAC 480-120-106. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Eighteenth Supplemental Order (December 1986).

The old partnership between the long lines department of AT&T, the Bell Operating Companies, and the independent telephone companies necessarily entailed subsidies flowing from one group of ratepayers to another. The post-divestiture telecommunications environment and the new policy directions require that companies begin to recognize the principles of cost causation in pricing. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Eighteenth Supplemental Order (December 1986).

The concept of volume discounts is rational, consistent with the development of competition in the state, and can be nondiscriminatory if properly designed. RCW 80.36.140; 80.36.180. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Eighteenth Supplemental Order (December 1986).

The Commission will not prejudice whether a telecommunications company's future tariff filing regarding proposed volume discounts will be fair, just and reasonable. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Eighteenth Supplemental Order (December 1986).

The Commission has the legal authority to require payment of interest on refunds for amounts overcollected. Generally, the proper measure of interest is the rate the company is required to pay on deposits. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-82-19, Sixth Supplemental Order (September 1986).

A methodology to effect a telephone rate refund based in part upon estimates of equipment life should be the most practical method of paying refunds to those persons who paid the original overpayments and/or will be benefitting from the plant investment that is being depreciated. Former customers should have the opportunity to share in the return of monies that they contributed. The methodology selected should not require administrative costs in large proportion to the refund. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-82-19, Sixth Supplemental Order (September 1986).

RCW 80.36.140 (cont.)

When rates are collected under a conditional requirement of refund during Commission compliance with a since-dissolved federal injunction enjoining implementation of rates ordered in a final Commission order, the proper measure for a refund of rates is the difference between the rates as ordered by the Commission and the rates actually collected. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-82-19, Sixth Supplemental Order (September 1986).

The Commission may consider issues related to the refund of amounts collected under a conditional requirement of refund during Commission compliance with a since-dissolved federal injunction enjoining implementation of rates ordered in a final Commission order, without waiting until after a hearing on the company's petition for rehearing in the principal case, when the remaining issues in the principal case are few and number and may be independently considered. RCW 80.04.110; 80.04.200; 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-82-19, Sixth Supplemental Order (September 1986).

In that the record in an earlier proceeding should not be augmented by means of a collateral proceeding, the Commission will reject a stipulation that calls for the continuation of the proceeding for the sole purpose of determining the amount of a public service company's revenue deficiency. RCW 80.36.140; Former WAC 480-08-150. WUTC v. AT&T Communications of the Pacific Northwest, Inc., Docket No. U-85-68, Fifth Supplemental Order (May 1986).

The purpose of a rate proceeding is to develop evidence from which the Commission may determine: 1) the appropriate test period to use for the investigation of the company's operations; 2) the company's results of operations for the appropriate test period, adjusted for unusual events during the test period and for known and measurable events; 3) the appropriate rate base which is derived from the balance sheets of the test period, and which represents the net book value of assets provided by investors' funds which are used and useful in providing utility service to the public; 4) an appropriate rate of return the company is authorized to earn on the rate base established by the Commission; 5) any existing revenue deficiencies; and 6) the allocation of the rate increases, if any, fairly and equitably among the company's ratepayers. RCW 80.04.250; 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-52, Fifth Supplemental Order (May 1986).

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Commission acceptance of a telecommunications company's rate spread and rate design proposals should not be construed as an endorsement of the rate design goals that the company has expressed. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-52, Fifth Supplemental Order (May 1986).

The "cost plus fair return" approach, not the "return on sales" approach, is the appropriate methodology for determining whether a payment made to an affiliated interest is reasonable. RCW 80.16.030; RCW 80.36.140. WUTC v. Continental Telephone Co. of the Northwest, Inc., Docket No. U-85-32, Second Supplemental Order (April 1986).

RCW 80.36.140 (cont.)

A ratemaking adjustment for management wage increases in periods of low inflation must clearly be justified by production of evidence such as improvements in productivity or other specified management accomplishments. RCW 80.36.140. WUTC v. Continental Telephone Co. of the Northwest, Inc., Docket No. U-85-32, Second Supplemental Order (April 1986).

The Commission will reject a ratemaking adjustment as not meeting the criteria for a pro forma adjustment when it is offset by other factors. RCW 80.36.140. WUTC v. Continental Telephone Co. of the Northwest, Inc., Docket No. U-85-32, Second Supplemental Order (April 1986).

Ratepayers should receive the benefit of the tax deduction associated with the interest expense that they pay in rates. This requires that unamortized investment tax credits (ITC) and CWIP be included in rate base for purposes of computing the pro forma interest adjustment, which recognizes the tax effect of increased interest expense in the test year revenue requirement. RCW 80.36.140. WUTC v. Continental Telephone Co. of the Northwest, Inc., Docket No. U-85-32, Second Supplemental Order (April 1986).

The Commission must examine the reasonableness of payments made to affiliated interests. RCW 80.16.030; RCW 80.36.140. WUTC v. Continental Telephone Co. of the Northwest, Inc., Docket No. U-85-32, Second Supplemental Order (April 1986).

The Commission will approve a telecommunications company's rate filing if the company has met its burden of proving that the proposed rates are fair, just and reasonable. RCW 80.04.130; RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co. et al., Docket No. U-85-23 et al., Fifteenth Supplemental Order (March 1986).

The Commission may accept a filing that would reduce rates (here for WATS/800 service) in order for a public service company to remain competitive. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co. et al., Docket No. U-85-23 et al., Fifteenth Supplemental Order (March 1986).

The Commission has not insulated private lines from contributing to the general costs of service of

a public service company. Rather, private lines may reasonably be expected to generate revenues that meet their current costs and provide a reasonable contribution to the joint costs of the company. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co. et al., Docket No. U-85-23 et al., Fifteenth Supplemental Order (March 1986).

The Commission need not endorse the quantum of proof presented in support of proposed rate reductions for the Commission to find it sufficient and accept the propriety of the reductions. RCW 80.36.140. WUTC v. Pacific Northwest Bell Telephone Co. et al., Docket No. U-85-23 et al., Fifteenth Supplemental Order (March 1986).

RCW 80.36.160 Physical connections may be ordered, routing prescribed, and joint rates established.

The Commission may authorize a local exchange company to become the primary toll carrier ("PTC") for intraLATA toll traffic originating in its service territory when the company accepts responsibility for all such toll traffic, including private line service, at the time it becomes a PTC. RCW 80.36.080; 80.36.160. WUTC v. GTE Northwest Incorporated, Docket Nos. UT-921462 & UT-921463; WUTC v. Contel of the Northwest Inc., Docket Nos. UT-921464 & UT-921465, Fifth Supplemental Order (June 1994).

A local exchange company that elects to become the primary toll carrier ("PTC") for intraLATA toll traffic originating in its service territory must accept responsibility for all such toll traffic, including private line service, at the time it becomes a PTC. RCW 80.36.080; 80.36.160. WUTC v. GTE Northwest Incorporated, Docket Nos. UT-921462 & UT-921463; WUTC v. Contel of the Northwest Inc., Docket Nos. UT-921464 & UT-921465, Third Supplemental Order (January 1994).

The Commission has the authority to require telecommunications companies to provide toll services jointly, and it may establish a reasonable division of joint rates under RCW 80.36.160. RCW 80.36.160. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Eighteenth Supplemental Order (December 1986).

RCW 80.36.170 Unreasonable preferences prohibited.

Absent any public policy concerns, tariffed services that are functionally and technically equivalent should generally be priced the same. RCW 80.36.140; 80.36.170; 80.36.180. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-930957, UT-931055, & UT-931058 (Consolidated), Fourth Supplemental Order (September 1994); affirmed and clarified, Fifth Supplemental Order (December 1994).

Tariffs for alternate operator service that contain multiple levels from which call aggregators may

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choose the actual rate that the AOS company will charge consumers of its services are improper if they do not meet the exceptions set out in WAC 480-120-141(1)(c), and may constitute an unreasonable preference or rate discrimination prohibited under RCW 80.36.170 or 180. In re Paytel Northwest, Inc., Docket No. UT-920632, Fourth Supplemental Order as corrected by Fifth Supplemental Order (October 1993).

RCW 80.36.180 Rate discrimination prohibited.

The Commission may accept a proposed tariff that acceptably meets the Commission's requirement that pricing of monopoly features of a Centrex-type service be unbundled from the pricing of competitive services, when perfection may be elusive and subjective, and further delay would not advance the public interest. RCW 80.36.180. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-911488; UT-911490; UT-920252, Sixth Supplemental Order (December 1994).

RCW 80.36.180 (cont.)

Absent any public policy concerns, tariffed services that are functionally and technically equivalent should generally be priced the same. RCW 80.36.140; 80.36.170; 80.36.180. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-930957, UT-931055, & UT-931058 (Consolidated), Fourth Supplemental Order (September 1994); affirmed and clarified, Fifth Supplemental Order (December 1994).

For determining a local exchange carrier's ("LEC") rates for toll service, the Commission requires that the cost of essential, monopoly services that a competitor also must use, be imputed at the tariffed rate. The Commission does not require that the cost of services that have been classified by Commission order as "competitive" be "imputed", but the LEC should include in the price floor of its toll service the actual cost of competitive elements used in its provision of service. RCW 80.36.140; 80.36.180. WUTC v. GTE Northwest Incorporated, Docket Nos. UT-921462 & UT-921463; WUTC v. Contel of the Northwest Inc., Docket Nos. UT-921464 & UT-921465, Third Supplemental Order (January 1994).

Tariffs for alternate operator service that contain multiple levels from which call aggregators may choose the actual rate that the AOS company will charge consumers of its services are improper if they do not meet the exceptions set out in WAC 480-120-141(1)(c), and may constitute an unreasonable preference or rate discrimination prohibited under RCW 80.36.170 or 180. In re Paytel Northwest, Inc., Docket No. UT-920632, Fourth Supplemental Order as corrected by Fifth Supplemental Order (October 1993).

If a telecommunications company's competitors are dependent upon the company's monopoly service elements, the company must price those elements the same for itself as it does for dependent competitors. It may not bundle monopoly features with its competitive services and then charge less for the monopoly elements when they are purchased from it as part of the bundle than it charges its competitors for the monopoly elements. RCW 80.36.180. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-911488, UT-911490, & UT-920252 (Consolidated), Fourth Supplemental

Order (November 1993).

The principles of imputation are appropriate for pricing essential monopoly elements of competitive telecommunications services. RCW 80.36.180. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-911488, UT-911490, & UT-920252 (Consolidated), Fourth Supplemental Order (November 1993).

When an interexchange company applies changes equally to all of its customers of a particular service, it does not engage in discriminatory practices. RCW 80.36.180; RCW 80.36.186. Metro-Net Services Corp. v. U.S. West Communications, Docket No. U-88-2417-F, Third Supplemental Order (May 1990).

The Commission may approve an imputation test for determining the appropriate price for a local exchange carrier's monopoly services that a competitor also must use. RCW 80.36.140; RCW 80.36.180. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-87-1083-T, Fifth Supplemental Order (May 1988).

RCW 80.36.180 (cont.)

In a competitive era, the Commission needs to be sure that a telecommunications company is not discriminating by means of its monopoly over basic transmission, and it will be wary of a proposed packaging of monopoly services together with competitive options. RCW 80.36.180. In re Pacific Northwest Bell Telephone Co., Docket Nos. U-86-34, U-86-35, U-86-36, & U-86-86; WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-90, Fourth Supplemental Order (April 1987).

The concept of volume discounts is rational, consistent with the development of competition in the state, and can be nondiscriminatory if properly designed. RCW 80.36.140; 80.36.180. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Eighteenth Supplemental Order (December 1986).

RCW 80.36.186 **Pricing of or access to noncompetitive services - Unreasonable preference or advantage prohibited.**

Although the Commission disfavors the practice of charging different prices for the same service based upon the type of central office from which it is provided, when one means of providing that service has a unique cost structure with the potential to adversely affect other system costs, its price should be based on the unique costs. RCW 80.36.186. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U.S. West Communications, Docket No. U-89-3260-T, Second Supplemental Order (October 1990).

In order to avert potential barriers to effective competition in the intrastate markets, a company that is both a retailer of services and a wholesale supplier of access for those services must impute to itself the same rate that it charges competitors. RCW 80.36.186. WUTC v. Pacific Northwest Bell

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Telephone Co. d/b/a U.S. West Communications, Docket No. U-89-3260-T, Second Supplemental Order (October 1990).

When an interexchange company applies changes equally to all of its customers of a particular service, it does not engage in discriminatory practices. RCW 80.36.180; RCW 80.36.186. Metro-Net Services Corp. v. U.S. West Communications, Docket No. U-88-2417-F, Third Supplemental Order (May 1990).

The release of non-published directory listings to telecommunications companies falls within the requirement that local exchange companies provide equal access to all interexchange companies and information providers. RCW 80.36.186. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-88-2149-T, Second Supplemental Order (March 1989).

When each rate group can be viewed as a distinct offering or product, an access charge imputation should be applied on a discrete, rate-by-rate basis. The Commission will not sacrifice the benefits of a non-discriminatory access charge system without a strong showing of necessity. RCW 80.36.186. In re Pacific Northwest Bell Telephone Co., Docket No. U-88-2052-P, Second Supplemental Order (January 1989).

RCW 80.36.190 Long and short distance provision.

The Commission may authorize a company to charge less for longer than for shorter distance service pursuant to RCW 80.36.190 when approving a telephone company's proposed tariff revisions. RCW 80.36.190. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-87-1083-T, Fifth Supplemental Order (May 1988).

RCW 80.36.230 Exchange areas for telecommunications companies.

Appellate decision. Language in RCW 80.36.230 granting the Commission authority "to prescribe exchange area boundaries and/or territorial boundaries for telecommunications companies" does not confer on the Commission the power to grant monopolies or exclusive rights to telecommunications companies. It does enable the Commission to define the geographical limits of a company's obligation to provide service on demand and to delineate the boundaries between local and long distance calling. RCW 80.36.230. In re Electric Lightwave, Inc. [In re Consolidated Cases], 123 Wash.2d 530, 869 P.2d 1045 (1994), reversing In re Electric Lightwave, Inc., Docket No. UT-901029, Third Supplemental Order (December 1991) and In re Digital Direct Of Seattle, Inc., Docket Nos. UT-910776 & UT-910777, Fourth Supplemental Order (April 1992).

Appellate decision Although the Commission does not have the authority to confer on a local exchange telephone company the right to be the exclusive provider of telecommunications services in a given exchange, it may limit the number of local exchange companies or other telecommunications companies that may operate in a given territory. RCW 80.36.230. In re Electric Lightwave, Inc. [In re Consolidated Cases], 123 Wash.2d 530, 869 P.2d 1045 (1994), reversing In re Electric Lightwave, Inc., Docket No. UT-901029, Third Supplemental Order (December 1991) and In re Digital Direct Of Seattle, Inc., Docket Nos. UT-910776 & UT-910777,

Fourth Supplemental Order (April 1992).

Appellate decision. Even if RCW 80.36.230 were ambiguous regarding whether the Commission may grant monopolies or exclusive rights to a telecommunications company in a territory, the state constitution makes it inappropriate to impute to RCW 80.36.230 a conferral of authority on the Commission to grant monopolies. Const. art. 12, §§ 19 and 22; RCW 80.36.230. In re Electric Lightwave, Inc. [In re Consolidated Cases], 123 Wash.2d 530, 869 P.2d 1045 (1994), reversing In re Electric Lightwave, Inc., Docket No. UT-901029, Third Supplemental Order (December 1991) and In re Digital Direct Of Seattle, Inc., Docket Nos. UT-910776 & UT-910777, Fourth Supplemental Order (April 1992).

Appellate decision. Given the constitutional protection of the right of all companies to provide telecommunications services and the constitutional proclamation against monopolies, the Legislature must expressly grant to the Commission the authority to grant monopolies before the Commission may exercise such rights. Const. art. 12, §§ 19 and 22; RCW 80.36.230. In re Electric Lightwave, Inc. [In re Consolidated Cases], 123 Wash.2d 530, 869 P.2d 1045 (1994), reversing In re Electric Lightwave, Inc., Docket No. UT-901029, Third Supplemental Order (December 1991) and In re Digital Direct Of Seattle, Inc., Docket Nos. UT-910776 & UT-910777, Fourth Supplemental Order (April 1992).

RCW 80.36.230 (cont.)

The Commission will authorize a telecommunications company to provide competing private line inter-/intra-exchange telecommunications services, and switched intra-exchange services, in an exchange, when the company has shown that it is financially and technically capable to provide the services proposed. RCW 80.36.140; 80.36.230. In re Tel-West Central Services, Inc., Docket No. UT-940647 (June 1994).

The Commission may approve a transfer of territory between two local exchange companies and revision of their exchange maps when the transfer is consistent with the public interest. RCW 80.12.020; 80.12.040; 80.36.230. In re U S WEST Communications, Inc./ Telephone Utilities of Washington, Inc., d/b/a PTI Communications, Inc., Docket Nos. UT-940507 and UT-940527, Order Granting Application (May 1994).

The Commission will grant an application for a tariff change that includes authority to incorporate certain unassigned territory, when costs and charges comply with Commission guidelines and map revisions are consistent with the public interest. RCW 80.04.130; RCW 80.36.140; RCW 80.36.230. In re Cowiche Telephone Co., Docket No. UT-900720, Order Granting Application (December 1990).

The Commission will grant an extension of service territory to a telecommunications company when the applicant would serve three separate contiguous areas adjacent to its assigned territory, when no basic communications services are currently being provided within that territory, when such service has been requested, and when rates for the service would be the same as those for the

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territory with existing service. RCW 80.36.855. In re Telephone Utilities of Washington, Inc., Docket No. UT-900671, Order Granting Application (August 1990).

An area that has not been legally assigned to any telecommunications company is subject to assignment by the Commission. RCW 80.36.230. WUTC v. Whidbey Telephone Co., Docket No. U-85-50; In re Telephone Service to the Point Roberts Area, Docket No. U-86-51; and In re Hallicrafters Equipment Company (Canada), Docket No. U-86-30; Second Supplemental Order (June 1986); underpinning assumptions reversed, In re Electric Lightwave, Inc., 123 Wash.2d 530, 869 P.2d 1045 (1994).

The Commission does not recognize a "social compact" theory of utility regulation that would allow or require the grant of a monopoly franchise to a company that has unlawfully provided service in a territory, as such a theory would render much of the Commission's statutory jurisdiction a nullity. RCW 80.01.040; RCW 80.36.230. WUTC v. Whidbey Telephone Co., Docket No. U-85-50; In re Telephone Service to the Point Roberts Area, Docket No. U-86-51; and In re Hallicrafters Equipment Company (Canada), Docket No. U-86-30; Second Supplemental Order (June 1986); underpinning assumptions reversed, In re Electric Lightwave, Inc., 123 Wash.2d 530, 869 P.2d 1045 (1994).

RCW 80.36.230 (cont.)

The granting by a county of a franchise to place utility equipment on public property cannot supersede the jurisdiction of the Commission to regulate companies that engage in regulated activities. RCW 80.36.230. WUTC v. Whidbey Telephone Co., Docket No. U-85-50; In re Telephone Service to the Point Roberts Area, Docket No. U-86-51; and In re Hallicrafters Equipment Company (Canada), Docket No. U-86-30; Second Supplemental Order (June 1986); underpinning assumptions reversed, In re Electric Lightwave, Inc., 123 Wash.2d 530, 869 P.2d 1045 (1994).

The theory of "grandfather" rights only protects contracts in existence at the time a public service law was adopted. Hence, in the absence of a legislative acknowledgment of "grandfather rights" in the field of telecommunications, the Commission is under no legal duty to recognize in a telecommunications company, which has been serving a particular area, a vested right to serve that area. RCW 80.36.230. WUTC v. Whidbey Telephone Co., Docket No. U-85-50; In re Telephone Service to the Point Roberts Area, Docket No. U-86-51; and In re Hallicrafters Equipment Company (Canada), Docket No. U-86-30; Second Supplemental Order (June 1986); underpinning assumptions reversed, In re Electric Lightwave, Inc., 123 Wash.2d 530, 869 P.2d 1045, as amended on denial of reconsideration (1994).

RCW 80.36.300 Policy declaration.

Cross reference:

- Alternative regulation of telecommunications companies: See RCW 80.36.135.

The Commission may rescind its approval of an alternative form of regulation (AFOR) that does not continue to satisfy the statutory conditions set forth in RCW 80.36.135(3), or may offer modifications that will permit the AFOR to satisfy the statutory conditions necessary to its continuation. RCW 80.36.135; 80.36.300. WUTC v. Pacific Northwest Bell Telephone Co., d/b/a U S WEST Communications, Inc., Docket Nos. U-89-2698-F & U-89-3245-P (Consolidated), Nineteenth Supplemental Order (September 1993).

A telecommunications company that the Commission has permitted to operate under an alternative form of regulation (AFOR) has the burden of proof in a proceeding to review the current AFOR to prove that the AFOR continues to satisfy the statutory criteria in RCW 80.36.135(3). RCW 80.36.135; 80.36.300. WUTC v. Pacific Northwest Bell Telephone Co., d/b/a U S WEST Communications, Inc., Docket Nos. U-89-2698-F & U-89-3245-P (Consolidated), Nineteenth Supplemental Order (September 1993).

An alternative form of regulation should be approved if it is shown to be better than traditional rate-of-return regulation at preventing monopoly abuse, ensuring that customers benefit from industry cost reductions, and meeting important social goals such as universal service. RCW 80.36.135; 80.36.300. WUTC v. Pacific Northwest Bell Telephone Co., d/b/a U S WEST Communications, Inc., Docket Nos. U-89-2698-F & U-89-3245-P (Consolidated), Nineteenth Supplemental Order (September 1993).

RCW 80.36.300 (cont.)

An alternative form of regulation that tends to reward the company excessively for efficiencies that are easiest to achieve, while providing inadequate incentives to pursue larger productivity increases, does not satisfy the statutory criteria in RCW 80.36.135(3). RCW 80.36.135; 80.36.300. WUTC v. Pacific Northwest Bell Telephone Co., d/b/a U S WEST Communications, Inc., Docket Nos. U-89-2698-F & U-89-3245-P (Consolidated), Nineteenth Supplemental Order (September 1993).

The Commission will reject a company's tariff filing to implement extended area service (EAS) when the costs are above those it is realistic to expect ratepayers to pay; prohibitively high rates would be inconsistent with the state's statutory goal of universal service. RCW 80.36.300; 80.36.855; WAC 480-120-400. WUTC v. Toledo Telephone Company, Inc., Docket No. UT-921259, Fourth Supplemental Order (September 1993).

The "public interest" factor in the telecommunications registration rule, WAC 480-121-040, cannot be used as a vehicle for applying the general policies enunciated in RCW 80.36.300 to deny a registration. The only "public interest" basis for denying a registration application would be that the proposed service did not satisfy the requirements of the registration statute, or that it violated applicable public service laws. Consistency with general statutory policy factors is not relevant to such a determination. RCW 80.36.300; 80.36.350; WAC 480-121-040. In re Electric Lightwave, Inc., Docket No. UT-901029, Fifth Supplemental Order (April 1993); In re Digital Direct of

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Seattle, Inc., Docket Nos. UT-910776 & UT-910777, Fifth Supplemental Order (April 1993).

An objective of regulation of telecommunications services is affordable universal basic service. RCW 80.36.300. In re Electric Lightwave, Inc., Docket No. UT-901029, Third Supplemental Order Granting Registration in Part (December 1991).

RCW 80.36.300 declares the state's policy to maintain and advance the efficiency and availability of telecommunications service. Simplification of the conditions under which competitive services are provided will advance this policy as long as reasonable supervision of telecommunications activities is maintained. In re United Telephone Co. of the Northwest, Docket No. U-87-1566-P, Second Supplemental Order (September 1988).

"Equal access" is a term of art meaning that the Bell Operating companies must provide access to interexchange carriers and information service providers that is equal in type, quality and price to the access provided to AT&T and its affiliates. It is one of the governing principles of the AT&T breakup. RCW 80.36.300. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a Amnet, Docket No. U-86-43, Seventh Supplemental Order (March 1988).

RCW 80.36.300 (cont.)

"Equal access" on an interLATA basis is different than "equal access" on an intraLATA basis. IntraLATA dialing parity need not be available for purposes of meeting the equal access requirements established by the FCC or the equal access definition as set forth in the Commission's Eighteenth Supplemental Order in Cause No. U-85-23 (December 1986). "Equal access" does not mean access equal to that provided by Pacific Northwest Bell directly to end user intraLATA customers and does not require "1 plus" dialing. RCW 80.36.300. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a Amnet, Docket No. U-86-43, Seventh Supplemental Order (March 1988).

A lack of dialing parity between the dominant local exchange company (LEC) and its intraLATA toll competitors is inconsistent with the policy declarations in RCW 80.36.300 [including: promote diversity in the supply of telecommunications services; maintain and advance the efficiency and availability of service]. However, the only complete remedy, an intraLATA pre-subscription requirement, would be costly, confusing to customers and unfair to a LEC that is unable to compete statewide. RCW 80.36.300. In re Notice of Inquiry Into IntraLata Presubscription and/or Equal Access, Docket No. U-87-963-R, Order Concluding Inquiry and Instituting Rulemaking (February 1988).

Because the universal service fund (USF) set forth in the intraLATA telecommunications plan (ITP) is not intended to be a permanent source of support for local exchange carriers, the Commission will carefully scrutinize the USF agreement to assure that it is truly transitional in nature. RCW 80.36.300. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Eighteenth Supplemental Order (December 1986).

Banded rates, which are authorized by the Regulatory Flexibility Act, are not appropriate for a monopoly service such as remote call forwarding. RCW 80.36.300; RCW 80.36.340. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-40, Second Supplemental Order (September 1986).

**RCW 80.36.310 Classification as competitive telecommunications companies, services--
Initiation of proceedings--Date of final order.**

Cross References

- See RCW 80.36.320.

**RCW 80.36.320 Classification as competitive telecommunications companies, services--
Factors considered--Minimal regulation--Equal access--Reclassification.**

The Commission may classify a company as a competitive telecommunications company pursuant to RCW 80.36.310 and 80.36.320 if the company establishes that the services for which it will be registered are subject to effective competition. In re Paytel Northwest, Inc., Docket No. UT-920632, Fourth Supplemental Order as corrected by Fifth Supplemental Order (October 1993).

RCW 80.36.320 (cont.)

The Commission will deny an Alternate Operator Services Company's petition for competitive classification that fails to demonstrate that the company's end-user consumers have reasonably available alternatives and that the company does not have a significant captive customer base at the location of the instrument. RCW 80.36.320; 80.36.520; WAC 480-120-021; 480-120-141. In re Paytel Northwest, Inc., Docket No. UT-920632, Fourth Supplemental Order as corrected by Fifth Supplemental Order (October 1993).

In reviewing operator services that are available only as alternate operator services, the relevant geographic market for an instrument that is presubscribed to the services of an Alternate Operator Services Company is the instrument from which the consumer receives operator services, and the relevant product market is operator-assisted telephone calls. RCW 80.36.320; 80.36.520; WAC 480-120-141. In re Paytel Northwest, Inc., Docket No. UT-920632, Fourth Supplemental Order as corrected by Fifth Supplemental Order (October 1993).

The Commission may classify a company as a competitive telecommunications company pursuant to RCW 80.36.310 and 80.36.320 if the company establishes that the services for which it will be registered are subject to effective competition. In re International Pacific, Inc., Docket No. UT-

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920546, Fifth Supplemental Order (September 1993).

The Commission will deny an Alternate Operator Services Company's petition for competitive classification that fails to demonstrate that the company's end-user consumers have reasonably available alternatives and that the company does not have a significant captive customer base at the location of the instrument. RCW 80.36.320; 80.36.520; WAC 480-120-021; 480-120-141. In re International Pacific, Inc., Docket No. UT-920546, Fifth Supplemental Order (September 1993).

In reviewing operator services that are available only as alternate operator services, the relevant geographic market for an instrument that is presubscribed to the services of an Alternate Operator Services Company is the immediate environs of the instrument, and the relevant product market is operator-assisted telephone calls. RCW 80.36.320; 80.36.520; WAC 480-120-141. In re International Pacific, Inc., Docket No. UT-920546, Fifth Supplemental Order (September 1993).

The Commission will consider a telecommunications company's relevant geographic market and whether effective competition exists throughout that market in deciding whether to restrict the geographic territory to which the company's competitive classification applies. RCW 80.36.310; 80.36.320. In re Digital Direct of Seattle, Inc., Docket Nos. UT-910776 & UT-910777, Fifth Supplemental Order (April 1993).

The procedural safeguards adopted by the Commission for proceedings for certain petitions for competitive classification under RCW 80.36.320 and 80.36.330 are reasonable and adequate to protect the due process rights of all parties potentially affected by a Commission decision in such a proceeding. RCW 80.36.320; 80.36.330; WAC 480-09-520. In re Electric Lightwave, Inc., Docket No. UT-920148, First Supplemental Order (October 1992).

RCW 80.36.320 (cont.)

The Commission may classify a telecommunications company as a competitive telecommunications company pursuant to RCW 80.36.310 and 80.36.320 if the company establishes that the services for which it will be registered are subject to effective competition. In re Digital Direct Of Seattle, Inc., Docket Nos. UT-910776 & UT-910777, Fourth Supplemental Order (April 1992).

Providers of resold intrastate long distance message toll service to customers for their direct transmission and reception of voice, data, and other types of communication, all of which services are fully available from alternative providers in the relevant market, including AT&T, U S WEST, MCI, and U S Sprint, and which have no captive customer base, should be classified as competitive telecommunications companies under RCW 80.36.320. In re Icon Telecommunications Corp., et al., Docket Nos. UT-900684, et al., First Supplemental Order (May 1991).

The Commission will deny an Alternate Operator Services Company's petition for competitive classification that fails to demonstrate that the company's end-user consumers have reasonably available alternatives and that the company does not have a significant captive customer base at the

location of the instrument. RCW 80.36.320; WAC 480-120-141. In re Teleconnect Long Distance Services & Systems Co. d/b/a Telecom USA Long Distance Co., Docket No. U-89-3219-P, Second Supplemental Order (July 1990).

Petitions for classification as competitive telecommunications companies should be denied when the petitioners have failed to identify, describe and analyze the relevant geographic market, and failed to demonstrate that effective competition exists. In the absence of full information, granting pricing flexibility to AOS firms would pose risks of capturing and exploiting end-users. RCW 80.36.320; WAC 480-120-021; WAC 480-120-141. Consolidated cases: International Pacific, Inc., Docket No. U-89-2603-P; American Operator Services, Inc., Docket No. U-89-2740-P; Central Corporation, Docket No. U-89-2741-P; Payline Systems, Inc., Docket No. U-89-2742-P; NTS-Idaho, Inc., d/b/a National Networks, Docket No. U-89-2743-P; International Telecharge, Inc., Docket No. U-89-2744-P, Second Supplemental Order (July 1990).

Evidence showing that a single telecommunications company has an overwhelming share of the intraLATA market, and that its intraLATA market share has remained constant over time, demonstrates that the company has a captive customer base and should not be classified as competitive. RCW 80.36.320; WAC 480-120-023. In re Pacific Northwest Bell Telephone Co., Docket No. U-88-2052-P, Second Supplemental Order (January 1989).

The mere existence of alternative technologies for private line service, displayed in a collection of advertising brochures and trade journal articles, does not show that they are currently in use in the relevant market or that the services should be classified as competitive. RCW 80.36.320; WAC 480-120-023. In re Pacific Northwest Bell Telephone Co., Docket No. U-88-2052-P, Second Supplemental Order (January 1989).

RCW 80.36.320 (cont.)

The Commission has the authority to establish the form of notice of price changes that a competitive telecommunications company must provide to its customers. RCW 80.36.320. In re Petition of Spokane Telco, Inc., et al., Docket No. U-85-93, et al., Order Rescinding Notice of Price Change Requirement (June 1988).

A competitive telecommunications company's price list is effective after ten days' notice to the Commission and customers. RCW 80.36.320; WAC 480-120-027. In re STS Communications, Inc., Docket No. U-87-1046-P, Order Granting Petition (August 1987).

The Commission will grant a telecommunications company's petition for classification as a competitive telecommunications company when the company has demonstrated that the services it offers are subject to effective competition. RCW 80.36.320. In re STS Communications, Inc., Docket No. U-87-1046-P, Order Granting Petition (August 1987).

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If a competitive telecommunications company is acquired by a telecommunications company still subject to regulation, the former's competitive status will automatically be reconsidered by the Commission. RCW 80.36.320. In re STS Communications, Inc., Docket No. U-87-1046-P, Order Granting Petition (August 1987).

The Commission may grant a telecommunications company's petition for classification as a competitive telecommunications company when the company has demonstrated that the services it offers are subject to effective competition. RCW 80.36.320; WAC 480-120-022. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. U-86-113, Fourth Supplemental Order (June 1987).

If a telecommunications company is classified as a competitive telecommunications company, it is subject to minimum regulation. RCW 80.36.320. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. U-86-113, Fourth Supplemental Order (June 1987).

The Commission, in granting a telecommunications company's petition for classification as a competitive telecommunications company, may impose certain conditions on the company; these conditions will remain in effect until the company proves that the conditions no longer are necessary to protect the public interest. RCW 80.36.320. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. U-86-113, Fourth Supplemental Order (June 1987).

The Commission may reclassify a telecommunications company and or revoke any of the waivers the Commission has granted if it deems such action necessary to protect the public interest. RCW 80.36.320. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. U-86-113, Fourth Supplemental Order (June 1987).

Market share is just one factor the Commission must analyze in deciding whether to grant a telecommunications company's petition for classification as a competitive telecommunications company. RCW 80.36.320. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. U-86-113, Fourth Supplemental Order (June 1987).

RCW 80.36.320 (cont.)

When a telecommunications company's customers have reasonably available alternatives to service, that company does not have, within the meaning of RCW 80.36.320, "a significant captive customer base." RCW 80.36.320. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. U-86-113, Fourth Supplemental Order (June 1987).

RCW 80.36.320 authorizes the Commission to adjust the level of regulation for different companies when it determines that different treatment is in the public interest. RCW 80.36.320. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. U-86-113, Fourth Supplemental Order (June 1987).

Waivers of Commission substantive regulations are not permitted for services classified as competitive under RCW 80.36.330. Waivers are only permitted for competitive companies, duly

classified as such pursuant to RCW 80.36.320. RCW 80.36.320; RCW 80.36.330; WAC 480-120-024. In re Enhanced Telemanagement, Inc., Docket No. U-86-59, First Supplemental Order (December 1986).

The Commission may revoke a waiver of regulations if the revocation would protect the public interest. RCW 80.36.320; WAC 480-120-024. In re Enhanced Telemanagement, Inc., Docket No. U-86-59, First Supplemental Order (December 1986).

The Commission may require a competitive telecommunications company to submit to reasonable reporting procedures. The Commission also may require the submission of informational reports regarding any area of the Commission's authorized jurisdiction, whether or not specific regulations relating to that area have been waived as to the particular company. RCW 80.36.320; WAC 480-120-024. In re Enhanced Telemanagement, Inc., Docket No. U-86-59, First Supplemental Order (December 1986).

The Commission will classify a telecommunications company as competitive when the company's customers have reasonably available alternatives, the company does not have a significant customer base and the company does not have market power that can be used to set the overall price level for the services it offers. RCW 80.36.320. In re Spokane Telco., Inc., et al., Docket Nos. U-85-93, U-86-60; U-86-64 to U-86-78; U-86-81; U-86-82; Order on Classification (September 1986); In re U.S. Sprint Communications Co., Docket No. U-86-79; In re MCI Telecommunications Corporation, Docket No. U-86-101, Order Granting Petitions In Part (September 1986).

The Commission will authorize a telecommunications company that it has found to be competitive to file price lists instead of tariffs. RCW 80.36.320; WAC 480-120-027 (decided before adoption of rule). In re Spokane Telco., Inc., et al., Docket Nos. U-85-93, U-86-60; U-86-64 to U-86-78; U-86-81; U-86-82; Order on Classification (September 1986); In re U.S. Sprint Communications Co., Docket No. U-86-79; In re MCI Telecommunications Corporation, Docket No. U-86-101, Order Granting Petitions In Part (September 1986).

RCW 80.36.320 (cont.)

During the transition from a monopolistic to a competitive environment, the Commission may require a competitive telecommunications company to submit to minimal reporting requirements. RCW 80.36.320. In re Spokane Telco., Inc., et al., Docket Nos. U-85-93, U-86-60; U-86-64 to U-86-78; U-86-81; U-86-82; Order on Classification (September 1986); In re U.S. Sprint Communications Co., Docket No. U-86-79; In re MCI Telecommunications Corporation, Docket No. U-86-101, Order Granting Petitions In Part (September 1986).

Consistent with the policy goals of the Regulatory Flexibility Act, in regulating competitive telecommunications companies the Commission will waive most Commission securities, affiliated interest and transfer of property requirements. However, in areas where there remains substantial

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public interest in protecting consumers, such as customer deposits and disconnection of service, the Commission will not waive its rules. RCW 80.36.320; WAC 480-120-024; 480-120-056; 480-120-081. In re Spokane Telco., Inc., et al., Docket Nos. U-85-93, U-86-60; U-86-64 to U-86-78; U-86-81; U-86-82; Order on Classification (September 1986); In re U.S. Sprint Communications Co., Docket No. U-86-79; In re MCI Telecommunications Corporation, Docket No. U-86-101, Order Granting Petitions In Part (September 1986).

The intent of the Regulatory Flexibility Act, Chapter 450, Laws 1985, can best be accomplished by requiring a competitive telecommunications company to file price lists, not tariffs, with the Commission. Once classified as competitive, a telecommunications company should no longer use tariff regulations as a shield. RCW 80.36.320; WAC 480-120-027. In re Allnet Communications Services, Inc., Docket No. U-85-75, Order Granting Petition in Part [and providing guidelines for future classification proceedings] (March 1986).

The Commission should exercise its regulatory authority to protect monopoly customers; however, when customers have effective choices, so that monopoly no longer exists, the rationale for full regulation no longer obtains. RCW 80.36.320. In re Allnet Communications Services, Inc., Docket No. U-85-75, Order Granting Petition in Part [and providing guidelines for future classification proceedings] (March 1986).

A competitive telecommunications company's price lists must contain sufficient detail to ensure that customers and the Commission understand exactly the nature of service offered and the charges for the service. RCW 80.36.320; WAC 480-120-027. In re Allnet Communications Services, Inc., Docket No. U-85-75, Order Granting Petition in Part [and providing guidelines for future classification proceedings] (March 1986).

A competitive telecommunications company must make its price lists available for inspection by persons requesting to see them. RCW 80.36.320; WAC 480-120-027. In re Allnet Communications Services, Inc., Docket No. U-85-75, Order Granting Petition in Part [and providing guidelines for future classification proceedings] (March 1986).

RCW 80.36.320 (cont.)

The Commission may grant a competitive telecommunications company's request for waiver of certain statutes or administrative rules. The Commission generally will require the company to adhere to the provisions of WAC 480-120-056 relating to customer deposits. RCW 80.36.320; WAC 480-120-024; 480-120-056. In re Allnet Communications Services, Inc., Docket No. U-85-75, Order Granting Petition in Part [and providing guidelines for future classification proceedings] (March 1986).

The Commission will review a telecommunications company's competitive classification periodically

after granting competitive classification or sooner if the company is acquired by a company still subject to full rate regulation. RCW 80.36.320. In re Allnet Communications Services, Inc., Docket No. U-85-75, Order Granting Petition in Part [and providing guidelines for future classification proceedings] (March 1986).

The quantum of evidence required in competitive classification proceedings will vary according to the circumstances of the case. RCW 80.36.320. In re Allnet Communications Services, Inc., Docket No. U-85-75, Order Granting Petition in Part [and providing guidelines for future classification proceedings] (March 1986).

While the public is better served by market forces than by regulation when effective competition exists, there is also substantial public interest in protecting consumers who are experiencing the transition from monopoly to competitive supply of many telecommunications services. RCW 80.36.320. In re Allnet Communications Services, Inc., Docket No. U-85-75, Order Granting Petition in Part [and providing guidelines for future classification proceedings] (March 1986).

**RCW 80.36.330 Classification as competitive telecommunications companies, services--
Effective competition defined--Prices and rates--Reclassification.**

Efficient and sustainable economic competition will not result by purposely maintaining an artificial margin within which competitors could operate. RCW 80.36.330. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-930957, UT-931055, & UT-931058 (Consolidated), Fourth Supplemental Order (September 1994); affirmed and clarified, Fifth Supplemental Order (December 1994).

When asked to reclassify a competitive telecommunications service as noncompetitive, the Commission will consider the existing classification; will review the service, the market in which it is offered, and the relevant circumstances of the offer, in light of the tests for competitive classification stated in RCW 80.36.330; and will determine whether good reason is shown for reclassification. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-911488, UT-911490, & UT-920252 (Consolidated), Fourth Supplemental Order (November 1993).

RCW 80.36.330 allows reclassification of a competitive telecommunications service when doing so will protect the public interest. A Commission decision that a telecommunications service is competitive is not res judicata. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-911488, UT-911490, & UT-920252 (Consolidated), Fourth Supplemental Order (November 1993).

RCW 80.36.330 (cont.)

In a competitive telecommunications service reclassification proceeding under RCW 80.36.330, the burden of proof is on the company offering the service to demonstrate that the existing classification is proper and consistent with the public interest. RCW 80.36.330; WAC 480-120-025(2). WUTC v. U S WEST Communications, Inc., Docket Nos. UT-911488, UT-911490, & UT-920252 (Consolidated), Fourth Supplemental Order (November 1993).

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In determining whether features in a Centrex system are competitive, the issue is not whether a particular feature may be offered only by the incumbent's network, but whether from the consumer's perspective that feature is effectively competitive in the context of the service package. RCW 80.36.330. WUTC v. U S WEST Communications, Inc., Docket Nos. UT-911488, UT-911490, & UT-920252 (Consolidated), Fourth Supplemental Order (November 1993).

The procedural safeguards adopted by the Commission for proceedings for certain petitions for competitive classification under RCW 80.36.320 and 80.36.330 are reasonable and adequate to protect the due process rights of all parties potentially affected by a Commission decision in such a proceeding. RCW 80.36.320; 80.36.330; WAC 480-09-520. In re Electric Lightwave, Inc., Docket No. UT-920148, First Supplemental Order (October 1992).

The petitioner seeking competitive classification has the burden to show that the service in question is subject to effective competition. RCW 80.36.330; WAC 480-120-022. In re Pacific Northwest Bell Telephone Co., Docket No. U-88-2052-P, Third Supplemental Order (May 1990).

Statutory law permits the Commission to find "effective competition" based on the totality of a record that shows that customers have a wide range of alternative service options available, and have the economic incentives, and the sophistication to exercise those options. RCW 80.36.330. In re Pacific Northwest Bell Telephone Co., Docket No. U-88-2052-P, Third Supplemental Order (May 1990).

The relevant market for an analysis of "effective competition" includes only those services that the telecommunications company seeks to de-tariff. RCW 80.36.330; WAC 480-120-023. In re Pacific Northwest Bell Telephone Co., Docket No. U-88-2052-P, Second Supplemental Order (January 1989).

A telecommunications company seeking classification of specific services as "competitive" under the Regulatory Flexibility Act, must show a pattern of declining market share or must explain why a steady market share is not inconsistent with the presence of effective competition. RCW 80.36.330; WAC 480-120-022. In re Pacific Northwest Bell Telephone Co., Docket No. U-88-2052-P, Second Supplemental Order (January 1989).

RCW 80.36.330 (cont.)

The Commission will not amend a condition upon the classification of a service as competitive when that condition directly affects the competitiveness of the service. By requiring that the telecommunications company allocate partial payments from local exchange service customers first to local exchange billing and collection charges and then pro rata to interexchange service charges,

the Commission reduces any market power gain that might accrue to the petitioner because of the local service disconnect advantage in collection. RCW 80.36.330; WAC 480-120-022. In re Pacific Northwest Bell Telephone Co., Docket No. U-88-1997-P, Third Supplemental Order (January 1989).

The Commission will classify a telecommunications company's service as competitive when it finds that the company's service is functionally equivalent to other services available in the market place, that customers have reasonably available alternatives and that the service is not provided to a significant captive customer base. RCW 80.36.330. In re Contel of the Northwest, Docket No. U-88-2186-P, Second Supplemental Order (December 1988).

The Commission may permit a telecommunications company to provide its billing and collection services under a price list when the Commission classifies those services as competitive. RCW 80.36.330. In re Pacific Northwest Bell Telephone Co., Docket No. U-88-1997-P, Second Supplemental Order (December 1988).

Long-run incremental costs (LRIC) should serve as a price floor for a local exchange carrier's billing and collection services classified as competitive. RCW 80.36.330. In re Pacific Northwest Bell Telephone Co., Docket No. U-88-1997-P, Second Supplemental Order (December 1988).

Billing and collection services are competitive telecommunications services pursuant to Section 5 of the Regulatory Flexibility Act if they are subject to effective competition, and the Commission generally will permit a company to file a price list rather than a tariff for those services. RCW 80.36.330. In re United Telephone Co. of the Northwest, Docket No. U-87-1566-P, Second Supplemental Order (September 1988).

A tariff filing involving volume discounts for large volume intraLATA toll customers is not a classification proceeding under RCW 80.36.330. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-87-1083-T, Fifth Supplemental Order (May 1988).

When a long distance carrier is found to be a competitive telecommunications company, the Commission may permit it to provide its services under a price list, using a format approved by the Commission. RCW 80.36.330. In re San Juan Long Distance Service, Docket No. U-87-1528-P, First Supplemental Order (January 1988).

The Commission may classify a telecommunications service as competitive if the service is subject to effective competition. RCW 80.36.330. In re Pacific Northwest Bell Telephone Co., Docket Nos. U-86-34, U-86-35, U-86-36, & U-86-86; WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-90, Fourth Supplemental Order (April 1987).

RCW 80.36.330 (cont.)

When a telecommunications company holds approximately 99% of the market for a telecommunications service, that service is not subject to effective competition. RCW 80.36.330.

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In re Pacific Northwest Bell Telephone Co., Docket Nos. U-86-34, U-86-35, U-86-36, & U-86-86; WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-90, Fourth Supplemental Order (April 1987).

Waivers of Commission substantive regulations are not permitted for services classified as competitive under RCW 80.36.330. Waivers are only permitted for competitive companies, duly classified as such pursuant to RCW 80.36.320. RCW 80.36.320; RCW 80.36.330; WAC 480-120-024. In re Enhanced Telemanagement, Inc., Docket No. U-86-59, First Supplemental Order (December 1986).

In authorizing a competitive telecommunications company to file price lists instead of tariffs, the Commission requires that the company's price lists must contain sufficient detail to ensure that customers and the Commission understand exactly the nature of service offered and the charges for that service; that the company make its price lists available for inspection by persons requesting to see them; that the company establish a procedure to make the terms and conditions of service available to customers; and that the company give its customers advance notice of price changes either in the billing cycle or by separate mailing. RCW 80.36.330; WAC 480-120-027 (decided before adoption of rule). In re Spokane Telco., Inc., et al., Docket Nos. U-85-93, U-86-60; U-86-64 to U-86-78; U-86-81; U-86-82; Order on Classification (September 1986); In re U.S. Sprint Communications Co., Docket No. U-86-79; In re MCI Telecommunications Corporation, Docket No. U-86-101, Order Granting Petitions In Part (September 1986).

RCW 80.36.340 Banded rates.

Rate bands and maximum and minimum rates that are unjust, unfair, and unreasonable in contravention of RCW 80.36.080 and are inconsistent with the banded rate policy set forth in the Second Supplemental Order in Cause U-86-40 will be rejected. RCW 80.36.080; 80.36.340. WUTC v. U S WEST Communications, Docket No. UT-911379, Order Adopting Settlement Agreement (March 1992).

Rate bands are an appropriate subject for Commission rulemaking, and rulemaking is the preferred means of addressing rate band tariffing so that the rules will be applicable to all companies and to all relevant services. RCW 80.36.080; 80.36.340. WUTC v. U S WEST Communications, Docket No. UT-911379, Order Adopting Settlement Agreement (March 1992).

Banded rates, which are authorized by the Regulatory Flexibility Act, are not appropriate for a monopoly service such as remote call forwarding. RCW 80.36.300; RCW 80.36.340. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-40, Second Supplemental Order (September 1986).

RCW 80.36.340 (cont.)

The Commission has adopted consistent principles for evaluation of banded rate proposals made by telecommunications companies: 1) the company should provide a business plan outlining the uses for flexible pricing and a rationale for why banded rates serve the public interest better than a fixed rate tariff -- the company should clearly state its intentions with respect to price changes; 2) banded rates should be experimental and have a definite expiration date; 3) the current rate for the service (or target rate in the case of a new service) should become the maximum of the band with decreases generally not to exceed 30 percent. RCW 80.36.340. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-40, Second Supplemental Order (September 1986).

Banded rate tariffs, although a middle ground between price lists and full tariff regulations, are still subject to all of the Commission's statutes and rules. RCW 80.36.340. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-40, Second Supplemental Order (September 1986).

RCW 80.36.350 Registration of new companies.

The "public interest" factor in the telecommunications registration rule, WAC 480-121-040, cannot be used as a vehicle for applying the general policies enunciated in RCW 80.36.300 to deny a registration. The only "public interest" basis for denying a registration application would be that the proposed service did not satisfy the requirements of the registration statute, or that it violated applicable public service laws. Consistency with general statutory policy factors is not relevant to such a determination. RCW 80.36.300; 80.36.350; WAC 480-121-040. In re Electric Lightwave, Inc., Docket No. UT-901029, Fifth Supplemental Order (April 1993); In re Digital Direct of Seattle, Inc., Docket Nos. UT-910776 & UT-910777, Fifth Supplemental Order (April 1993).

Federal Communications Commission rules prohibiting cross-ownership of cable operations and telephone operations do not bar Commission registration of a telecommunications subsidiary of a cable company. RCW 80.36.350. In re Digital Direct Of Seattle, Inc., Docket Nos. UT-910776 & UT-910777, Fourth Supplemental Order (April 1992).

A company that markets a service that allows subscribers to bridge overlapping EAS areas is required to register with the Commission as a telecommunications company. RCW 80.04.010; RCW 80.36.350; Chapter 480-121 WAC. In re U. S. Metrolink Corp., Docket No. U-88-2370-J, Second Supplemental Order (May 1989).

The Commission's policy to endorse diversity in telecommunications services does not mean that it sees a duty to subsidize developing competition. Telecommunications companies and their customers must pay their fair share of network costs through an access charge. RCW 80.36.350. In re U. S. Metrolink Corp., Docket No. U-88-2370-J, Second Supplemental Order (May 1989).

If a telecommunications company has accepted conditions of registration, the Commission will order the company to abide by those conditions. RCW 80.36.350. In re Ideal Z-Tel, Inc., Docket No. U-86-128, Order Authorizing Registration (December 1986).

RCW 80.36.350 (cont.)

Chapter 80.36 RCW

The Commission may approve a company's registration as a telecommunications company when such registration is not inconsistent with the public interest. RCW 80.36.350.

In re Ideal Z-Tel, Inc., Docket No. U-86-128, Order Authorizing Registration (December 1986).

In re Metro-Net Services Corp., Docket No. U-86-118, Order Authorizing Registration (November 1986).

The Commission's authorization of an applicant's registration as a telecommunications in no way endorses the financial viability of the applicant nor the investment quality of any securities it may issue. RCW 80.36.350.

In re Ideal Z-Tel, Inc., Docket No. U-86-128, Order Authorizing Registration (December 1986).

In re Metro-Net Services Corp., Docket No. U-86-118, Order Authorizing Registration (November 1986).

RCW 80.36.360 Exempted actions or transactions.

The Commission's complaint procedures are available to customers injured by a competitive telecommunications company. Competitive telecommunications companies are also subject to the Consumer Protection Act. RCW 80.04.110; RCW 80.36.360. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. U-86-113, Fourth Supplemental Order (June 1987).

RCW 80.36.370 Certain services not regulated.

A company that uses local exchange lines to provide interexchange telecommunications services to paying members of the general public through an arrangement with an affiliate is not a private shared telecommunications services provider as defined in RCW 80.040.010, and thus is not exempt from regulation pursuant to RCW 80.36.370. Washington STS, Ltd. v. U S WEST Communications, Inc., Docket No. UT-921213, Second Supplemental Order (June 1993).

Any corporation that holds itself out to the public to inter-connect access lines provided by local exchange companies is a telecommunications company, unless it falls within the class of identified service providers that are exempt from Commission regulation. RCW 80.04.010; RCW 80.36.370. In re U. S. Metrolink Corp., Docket No. U-88-2370-J, Second Supplemental Order (May 1989).

A private shared telecommunications service (STS) provider does not fall within the definition of a "telecommunications company" under RCW 80.04.010, because its services are not offered to the general public. RCW 80.04.010; RCW 80.36.370. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-33, First Supplemental Order (January 1987).

Private shared telecommunications services (STS) are largely exempted from Commission

regulation, and they have the potential to offer substantial benefits to small and middle-sized business customers. RCW 80.36.370. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-86-33, First Supplemental Order (January 1987).

RCW 80.36.500 Information delivery services through exclusive number prefix [1-900 services].

Constitutional and traditional notions of privacy affect the Commission's decisions on all telecommunications services, regardless of whether subscribers have non-published numbers. Each local exchange subscriber must have the opportunity to block unwarranted access offered through the local exchange company. RCW 80.36.500; WAC 480-120-089. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-88-2149-T, Second Supplemental Order (March 1989).

RCW 80.36.520 Disclosure of alternate operator services.

An alternate operator service provider has the right and the power, through its ability to contract with the unregulated aggregators who provide the means for the public to access AOS services, to contract for compliance with the Commission's rules and for authority to take reasonable steps to assure compliance. It also has the power to take other, non-contracted, reasonable steps to assure compliance. RCW 80.36.520; 80.36.524; WAC 480-120-141. WUTC v. International Pacific, Inc., Docket No. UT-921340, Second Supplemental Order (November 1993).

The Commission will deny an Alternate Operator Services Company's petition for competitive classification that fails to demonstrate that the company's end-user consumers have reasonably available alternatives and that the company does not have a significant captive customer base at the location of the instrument. RCW 80.36.320; 80.36.520; WAC 480-120-021; 480-120-141. In re Paytel Northwest, Inc., Docket No. UT-920632, Fourth Supplemental Order as corrected by Fifth Supplemental Order (October 1993).

In reviewing operator services that are available only as alternate operator services, the relevant geographic market for an instrument that is presubscribed to the services of an Alternate Operator Services Company is the instrument from which the consumer receives operator services, and the relevant product market is operator-assisted telephone calls. RCW 80.36.320; 80.36.520; WAC 480-120-141. In re Paytel Northwest, Inc., Docket No. UT-920632, Fourth Supplemental Order as corrected by Fifth Supplemental Order (October 1993).

The Commission will deny an Alternate Operator Services Company's petition for competitive classification that fails to demonstrate that the company's end-user consumers have reasonably available alternatives and that the company does not have a significant captive customer base at the location of the instrument. RCW 80.36.320; 80.36.520; WAC 480-120-021; 480-120-141. In re International Pacific, Inc., Docket No. UT-920546, Fifth Supplemental Order (September 1993).

Chapter 80.36 RCW

In reviewing operator services that are available only as alternate operator services, the relevant geographic market for an instrument that is presubscribed to the services of an Alternate Operator Services Company is the immediate environs of the instrument, and the relevant product market is operator-assisted telephone calls. RCW 80.36.320; 80.36.520; WAC 480-120-141. In re International Pacific, Inc., Docket No. UT-920546, Fifth Supplemental Order (September 1993).

RCW 80.36.522 Alternate operator service companies--Registration--Penalties

A per-call location surcharge fee paid to a location provider by an alternate operator service ("AOS") company is an expense of doing business that the Commission may review before the Commission authorizes a tariff for its collection from consumers. RCW 80.36.140; 80.36.522. WUTC v. Payline Systems, Inc., d/b/a Oasis, Docket No. UT-911250, Second Supplemental Order (July 1992).

The Commission will not approve a location surcharge without a demonstration that the surcharge is required to meet reasonable costs of providing the service. Location surcharges are not just or reasonable to the extent they exceed reasonable costs associated with providing the location. RCW 80.36.140; 80.36.522. WUTC v. Payline Systems, Inc., d/b/a Oasis, Docket No. UT-911250, Second Supplemental Order (July 1992).

RCW 80.36.524 Alternate operator service companies--Rules.

An alternate operator service provider has the right and the power, through its ability to contract with the unregulated aggregators who provide the means for the public to access AOS services, to contract for compliance with the Commission's rules and for authority to take reasonable steps to assure compliance. It also has the power to take other, non-contracted, reasonable steps to assure compliance. RCW 80.36.520; 80.36.524; WAC 480-120-141. WUTC v. International Pacific, Inc., Docket No. UT-921340, Second Supplemental Order (November 1993).

RCW 80.36.855 Extended area service program.

The Commission will reject a company's tariff filing to implement extended area service (EAS) when the costs are above those it is realistic to expect ratepayers to pay; prohibitively high rates would be inconsistent with the state's statutory goal of universal service. RCW 80.36.300; 80.36.855; WAC 480-120-400. WUTC v. Toledo Telephone Company, Inc., Docket No. UT-921259, Fourth Supplemental Order (September 1993).

The Commission will reject a settlement proposal that would unduly shift burdens from those communities requesting the less costly Extended Area Service to communities evidencing no reciprocal calling interest. RCW 80.36.855. WUTC v. Lewis River Telephone Co., Docket No. U-89-3100-T, Second Supplemental Order (August 1990).

RCW 80.36.855 (cont.)

The Commission will reject a settlement agreement proposing that smaller urban and rural communities receive extended basic local calling through Extended Area Service routes into a larger community, absent documented interest on the part of the larger community's subscribers to justify the rates that would be imposed. RCW 80.36.855. WUTC v. Yelm Telephone Co., Docket No. U-89-3528-T, First Supplemental Order (August 1990).

The Commission will not accept a proposed Extended Area Service settlement agreement that would impose a mandatory increase in service charges upon telecommunications customers who choose not to subscribe to optional extended area service. RCW 80.36.855. WUTC v. Lewis River Telephone Co., Docket No. U-89-3100-T, First Supplemental Order (June 1990).

CHAPTER 80.66 RCW

RADIO COMMUNICATIONS SERVICE COMPANIES

RCW 80.66.010 Scope of regulation--Filing of certain agreements.

The Commission, except as expressly provided in RCW 80.66.010, is prohibited from regulating radio communications service companies, as that term is defined in RCW 80.04.010. The Commission may not accept filing of tariffs for provision of service that is not subject to Commission regulation. RCW 80.66.010. In re U S WEST Newvector Group, Inc., Docket No. UT-910510, Declaratory Order (July 1991).

CHAPTER 82.35 RCW

COGENERATION FACILITIES--TAX CREDITS

Chapter 82.35 RCW does not address the granting of any kind of regulatory credit by the Commission to an electric company in a rate case. Chapter 82.35 RCW. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Twentieth Supplemental Order [Prudence] (December 1994).

FORMER CHAPTER 480-08 WAC PROCEDURE

(Superseded November 1989 by Chapter 480-09 WAC)

Former WAC 480-08-015 Submission of "Confidential" Information.

A protective order is appropriate when proprietary and confidential information will likely be provided in a proceeding under circumstances that create a significant risk of disclosing truly confidential material. RCW 80.04.095; Former WAC 480-08-015. WUTC v. GTE Northwest, Inc., Docket Nos. U-88-2438-T, U-88-2443-T, Third Supplemental Order (February 1989).

Hearings should remain open to the public unless specific and substantial cause is shown for closure. RCW 34.05.449; Former WAC 480-08-015. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C, U-88-2127-C, Third Supplemental Order (January 1989).

A party must show substantial need for confidentiality before a hearing will be closed to the public or a transcript or portion thereof will be sealed. RCW 34.05.449; RCW 80.04.095; Former WAC 480-08-015. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C, U-88-2127-C, Third Supplemental Order (January 1989).

In the absence of timely objection to a motion to modify a protective order to allow a party to use information that another party has designated as confidential, the Commission may modify a protective order to allow a limited release of documents subject to the order, for use in a federal court proceeding. Former WAC 480-08-015. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al, Eightieth Supplemental Order (December 1987).

Former WAC 480-08-050 Pleadings.

Subsections of former rule:

- | | |
|-------------------------------|--------------------------------|
| (1) Pleadings enumerated. | (11) Formal complaints-- |
| (2) Verification. | contents. |
| (3) Time for motion. | (12) Petitions. |
| (4) Time for answer or reply. | (13) Petitions--contents. |
| (5) Defective pleadings | (14) Answer. |
| [may be returned]. | (15) Reply. |
| (6) Liberal construction. | (16) Motions [including for |
| (7) Amendments. | reopening]. |
| (8) Disposition of motions. | (17) Petitions for rule making |
| (9) Consolidation of | amendment or repeal. |
| proceedings. | (18) Declaratory rulings. |
| (10) Formal Complaints. | (19) Forms. |

Proceedings that involve common questions of law and fact, may be consolidated for hearing and decision. Former WAC 480-08-050. Cam-Net Systems, Inc., Docket No. U-89-2632-P; Cam-Net, Inc., Docket No. U-89-2736-P, Tacoma Telephone Exchange, Inc., Docket No. U-89-2737-P, Universal Residential Communications, Inc., Docket No. U-89-2738-P, Universal Residential Communications, Inc., Docket No. U-89-2739-P, First Supplemental Order (May 1989).

Former Chapter 480-08 WAC

Former WAC 480-08-050 (cont.)

An unauthorized reply will not be considered. Former WAC 480-08-050. Metro-Net Services Corp. v. U.S. West Communications, Docket No. U-88-2417-F, First Supplemental Order (January 1989).

The purpose of requiring specificity in a complaint is to advise the parties of the issues to be presented. RCW 80.04.110; Former WAC 480-08-050. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a AMNET, Docket No. U-86-43, Fifth Supplemental Order (April 1987).

The Commission disfavors a narrow "code pleading" approach in a complaint proceeding. RCW 80.04.110; Former WAC 480-08-050. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a AMNET, Docket No. U-86-43, Fifth Supplemental Order (April 1987).

In an application for authority proceeding, consolidation of hearings is proper when it serves the public interest by ensuring constitutional protections, facilitates comparative review of competing applications and reduces the time and expense required for completing the review of all applications. Former WAC 480-08-050. In re Inter Island Telephone Co., Inc., Docket No. U-86-132, Sixth Supplemental Order (February 1987).

Former WAC 480-08-070 Intervention.

In a rate proceeding, the Commission may grant ratepayers' motion for late intervention when the ratepayers do not have public counsel or other legal representation and will benefit from the assistance of legal counsel in presenting their views. Former WAC 480-08-070. WUTC v. Rivervale Water System, Docket No. U-86-32, First Supplemental Order (October 1986).

The Commission may deny an intervenor's motion for continuance when a continuance would unnecessarily delay disposition of the matter. Former WAC 480-08-070; Former WAC 480-08-150. WUTC v. Rivervale Water System, Docket No. U-86-32, First Supplemental Order (October 1986).

A party's petition to intervene in a consolidated tariff filing proceeding is not untimely when the party had intended to intervene in one of the proceedings and its petition to intervene is not untimely as to that proceeding. Former WAC 480-08-070. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Sixteenth Supplemental Order (March 1986).

Former WAC 480-08-080 Appearances.

In an application for authority proceeding, Public Counsel does not appear as a representative of specific interests or other applicants; rather, Public Counsel is deemed to appear on behalf of the consuming public and the public interest generally. Former WAC 480-08-080. In re Inter Island

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Telephone Co., Inc., Docket No. U-86-132, Sixth Supplemental Order (February 1987).

Former WAC 480-08-100 Prehearing conferences.

In the absence of an admission, a proposed stipulation, or a strong showing of good cause, the Commission will not make findings of fact prior to completion of the hearing. Former WAC 480-08-100. Metro-Net Services Corp. v. U. S. West Communications, Docket No. U-88-2417-F, Second Supplemental Order (August 1989).

At a prehearing conference, the presiding officer is not prohibited from making rulings on contested procedural matters. Former WAC 480-08-100. In re Inter Island Telephone Co., Inc., Docket No. U-86-132, Fifth Supplemental Order (January 1987).

Following a prehearing conference, the presiding officer is required to issue a proposed form of notice stating any agreements made by the parties and the resulting simplified issues. Former WAC 480-08-100. In re Inter Island Telephone Co., Inc., Docket No. U-86-132, Fifth Supplemental Order (January 1987).

Former WAC 480-08-110 Voluntary settlement.

The Commission may accept a proposed stipulated settlement that is consistent with the public interest. Former WAC 480-08-110. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-88-2188-T, Second Supplemental Order (March 1989).

The Commission will not approve a draft agreement for the administration of a universal calling fund with a material term based upon the voluntary action of one of the parties; the term must be subject to the Commission's control. Former WAC 480-08-110. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Seventy-eighth Supplemental Order (October 1987).

The Commission will accept the terms of a proposed settlement stipulation when the settlement is proper and consistent with the public interest. Former WAC 480-08-110; WAC 480-100-031. In re Washington Water Power Co., Docket No. U-87-795-P, Decision and Order (August 1987).

The Commission will accept a settlement agreement when the agreement is fully supported by the record and reaches a result that is reasonable and is in the public interest. Former WAC 480-08-110. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-52, Ninth Supplemental Order (May 1987).

The Commission's acceptance of a settlement agreement does not necessarily mean that the Commission accepts a particular resolution of any of the issues involved in the proceeding. Former WAC 480-08-110. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-52, Ninth Supplemental Order (May 1987).

The Commission will approve a settlement agreement that authorizes an electric utility to pro-rate bills following changes in meter reading dates when tariff revisions filed in the form of those

Former Chapter 480-08 WAC

attached to the agreement would be reasonable and just. Former WAC 480-08-110; WAC 480-100-101. WUTC v. Puget Sound Power & Light Co., Docket No. U-86-87, First Supplemental Order (March 1987).

Former WAC 480-08-110 (cont.)

In a rate case, the Commission will accept a proposed stipulated settlement agreement when it represents the best means of resolving the issues presented and when the terms are fair, just and reasonable. RCW 80.28.020; Former WAC 480-08-110. WUTC v. Washington Water Power Co., Docket No. U-86-99, Second Supplemental Order [WNP-3 Order] (February 1987).

The Commission will accept a stipulated settlement providing for a rate increase if the tariff filings submitted pursuant to the stipulation yield a fair return on the utility's rate base and will result in rates that are just, fair, reasonable, and sufficient. RCW 80.28.020; Former WAC 480-08-110. WUTC v. Cascade Natural Gas Corp., Docket No. U-86-100, Second Supplemental Order (January 1987).

Former WAC 480-08-150 Continuances.

The Commission may deny an intervenor's motion for continuance when a continuance would unnecessarily delay disposition of the matter. Former WAC 480-08-070; Former WAC 480-08-150. WUTC v. Rivervale Water System, Docket No. U-86-32, First Supplemental Order (October 1986).

In that the record in an earlier proceeding should not be augmented by means of a collateral proceeding, the Commission will reject a stipulation that calls for the continuation of the proceeding for the sole purpose of determining the amount of a public service company's revenue deficiency. RCW 80.36.140; Former WAC 480-08-150. WUTC v. AT&T Communications of the Pacific Northwest, Inc., Docket No. U-85-68, Fifth Supplemental Order (May 1986).

Former WAC 480-08-180 Order of Procedure.

A utility that does not distribute to other parties its updated background material and work papers in time for the parties to present evidence on a major issue, fails to follow acceptable procedure. Information available early in the case should not be hoarded for presentation at rebuttal. RCW 34.05.449; Former WAC 480-08-180. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

It is unacceptable for a utility to limit other parties' opportunity to examine a proposal by waiting until rebuttal to present its alternative rate design plan. The Commission expects the company to present its proposals in its direct case. RCW 34.05.449; RCW 80.28.020; Former WAC 480-08-180. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

Former WAC 480-08-240 Proposed orders by examiners [+ Exceptions; Final Orders].

Subsections of former rule:

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|--|-----------------------------------|
| (1) General. | (7) Replies--Who may file. |
| (2) Preparation and service of proposed order. | (8) Replies--Time for filing. |
| (3) Briefs to examiner. | (9) Replies--Contents. |
| (4) Exceptions--Who may file. | (10) Time for filing--Variance. |
| (5) Exceptions--Time for filing. | (11) Briefs or written arguments. |
| (6) Exceptions--Contents. | (12) Oral argument. |
| | (13) Final decision. |

A person may be a technical adviser to both the presiding administrative law judge at the proposed order stage and to the Commission in the same proceeding. The Commission has discretion as to whom it employs as assistants and advisers. Its employees have no personal or financial interest in the outcome of proceedings. Former WAC 480-08-240; RCW 80.01.030. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

The Commission will accept findings of fact if they are supported by the evidence. Former RCW 34.04.110; Former WAC 480-08-240. WUTC v. Whidbey Telephone Co., Docket No. U-86-105; In re Inter-Island Telephone Co., Inc., Docket No. U-86-132; In re Point Roberts Telecommunications, Inc., Docket No. U-86-134 (Consolidated), Order Denying Exceptions (June 1987).

All facts identified in a Commission decision constitute findings of fact. The findings are summarized by numbered specific findings. The Commission may incorporate prior consistent findings of an Administrative Law Judge's Proposed Order. Former WAC 480-08-240. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Nineteenth Supplemental Order [Clarification Order] (January 1987).

Former WAC 480-08-250 Rehearing or reconsideration. [and reopening on reconsideration]

Subsections of former rule:

- (1) General.
- (2) Contents.
- (3) Amendment of rescission of orders or rules.

Cross References

- Time for Filing Petition for Rehearing: See RCW 81.04.200.
- Time for filing Petition for Reconsideration: See Former RCW 81.04.165 for cases

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- prior to 1986 repeal.
- ▶ Reopening to Contest Dismissal After Failing to Appear at Hearing: See WAC 480-09-700.
- ▶ Reopening After Proposed Order: See Former WAC 480-08-050.
- ▶ **See Index for references to current procedural rules.**

Former WAC 480-08-250 (cont.)

Reconsideration will not be given to arguments previously considered and resolved in the final order. Former WAC 480-08-250. Pacific Northwest Bell Telephone Co., d/b/a U. S. West Communications v. GTE Northwest, Inc., Docket No. U-88-2421-F, Third Supplemental Order (January 1989).

The Commission may reopen a hearing if satisfactory progress is not being made by a party toward commitments made by it or requirements imposed upon it. Former WAC 480-08-250. WUTC v. Pacific Beach Water, Inc., Docket No. U-86-57, Order on Review (February 1987).

The proper time to contest the findings and conclusions of an initial order is on administrative review, not on reconsideration. Former WAC 480-08-250. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Nineteenth Supplemental Order [Clarification Order] (January 1987).

The Commission will grant reconsideration to clarify an order. Former WAC 480-08-250. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Nineteenth Supplemental Order [Clarification Order] (January 1987).

The Commission may grant reconsideration to clarify an order. Former WAC 480-08-250. WUTC v. Pacific Power & Light Company, Docket No. U-86-02, Order Granting In Part Reconsideration (October 1986).

As a general rule, the Commission should not rehear prior cases based upon different decisions in later cases based upon different records. RCW 80.04.200; Former WAC 480-08-250. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-82-19, Sixth Supplemental Order (September 1986).

A party is not entitled to an oral hearing on its petition for rehearing when the matters raised are not new or of a sort that were not considered by the Commission. RCW 80.04.200; Former WAC 480-08-250. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-82-19, Sixth Supplemental Order (September 1986).

Former WAC 480-08-260 No discussion of proceeding until decision.

A motion that seeks information about off-the-record contacts not related to the case at hand will be denied. Disclosure must be limited to information regarding the pending docket. Former RCW 34.04.115; Former WAC 480-08-260. In re Pacific Northwest Bell Telephone Co., Docket No.

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U-88-2052-P, Second Supplemental Order (January 1989).

Former WAC 480-08-280 Administrative rulings.

For reasons of efficiency and economy, the Commission prefers that interlocutory review of orders be exercised sparingly. Former WAC 480-08-280. In re Inter Island Telephone Co., Inc., Docket No. U-86-132, Fifth Supplemental Order (January 1987).

CHAPTER 480-09 WAC

PROCEDURE

WAC 480-09-015 Submission of "confidential" information.

The Commission may modify a protective order to extend it beyond the conclusion of a proceeding, and allow counsel to retain all protected documents rather than protected exhibits only, when the final order contemplates that issues integral with the utility's presentation will be addressed in a future proceeding, and when a party demonstrates that retention will permit conservation of resources and possible loss of access to relevant information. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-930511, Fifth Supplemental Order (July 1994).

The Commission will reject a tariff filing that fails to segregate confidential or proprietary information from primary exhibits and provide the deletions under separate cover, or a filing that categorizes public information as "confidential". WAC 480-09-015. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U.S. West Communications, Docket No. U-89-3260-T, First Supplemental Order (June 1990).

WAC 480-09-100 Commission address--Communications.

A petition for reconsideration, clarification, or reopening that is not timely filed will be rejected. Filing is complete only when the document is delivered to the office of the secretary and stamped with the date and time. RCW 34.05.470; WAC 480-09-100; 480-09-810. In re Puget Sound Power & Light Company, Docket No. UE-910689, Commission Letter Rejecting Petition (January 1992).

WAC 480-09-230 Declaratory orders.

The Commission will not entertain a petition for a declaratory order if the result could prejudice a person's rights within the meaning of RCW 34.05.240(7), unless the person first consents in writing to the determination of the matter by a declaratory order proceeding. The burden is on the petitioner party to obtain the necessary consent. RCW 34.05.240; WAC 480-09-230. In re Petition of Partnership for Equitable Rates for Commercial Customers, Docket No. UG-940326 (March 1994).

The Commission will receive oral argument on a petition for a declaratory order when the argument will clarify matters or assist in reaching a decision. WAC 480-09-230. In re U S WEST Communications, Inc., Docket No. UT-910785, Declaratory Order (October 1991).

It is not necessary that the petitioner for a declaratory order be an entity regulated by the Commission; it is only necessary that the petitioner be an interested person. RCW 34.05.240; WAC 480-09-230. In re Tanner Electric Company, Docket No. UE-901596, Declaratory Order (March, 1991); recon. denied, First Supplemental Order (April 1991).

WAC 480-09-300 Filing requirements--Statement of policy.

Rejection of late-filed documents does not prevent the Commission from reviewing the issues presented by the deficient pleadings on its own motion. WAC 480-09-300. WUTC v. Ludlow Utilities Co., Docket No. U-87-1550-T, Fourth Supplemental Order (October 1988).

WAC 480-09-400 Applications for adjudicative proceedings.

The Commission may decide not to conduct an adjudicative proceeding in response to an application to the agency when the application or pleading is defective in numerous regards and asks relief beyond the Commission's jurisdiction to grant. RCW 34.05.416; WAC 480-09-400. Richard L. Pope, Jr. v. GTE Northwest Incorporated, Docket No. UT-930244 (July 1993).

WAC 480-09-420 Pleadings--Applications for authority--Protests.

The Commission generally will not authorize the filing of a reply to answers to a petition for administrative review when further pleadings are unnecessary to a full exposition of the issues. RCW 34.05.464; WAC 480-09-420; 480-09-780. WUTC v. GTE Northwest Incorporated, Docket Nos. UT-921462; UT-921463; UT-921464; UT-921465, Fourth Supplemental Order (April 1994).

The Commission may dismiss a complaint that does not identify dates or specific actions which are alleged to be in violation of Commission rules governing the respondent when the complainant fails to amend the complaint or to argue its sufficiency when so invited by the Commission. RCW 34.05.419; 80.04.110; WAC 480-09-420(5). Michele R. Ross and Charles Woodson v. U S WEST Communications, Docket No. UT-910722, Order of Dismissal (August 1991).

The Commission has the authority to hear a motion for summary judgment. WAC 480-09-420(8). In re GCI Fibernet, Inc. Docket No. UT-901406, Fourth Supplemental Order (March 1991).

A complaint must state clearly and concisely the nature of the complaint, the facts that comprise the basis for the complaint, and the relief requested. WAC 480-09-420. SOS David Peter and David Peter, M.T.L. v. U.S. West Communications, Docket No. UT-900612, First Supplemental Order (October 1990).

When complainant had a full and reasonable opportunity to prepare the complaint, to pursue information, to appear at a meaningful hearing, and to present evidence -- but did not use all of those opportunities -- he has not been denied the right to a hearing. WAC 480-09-420. SOS David Peter and David Peter, M.T.L. v. U.S. West Communications, Docket No. UT-900247, Second Supplemental Order (October 1990).

The Commission will dismiss a formal complaint in the absence of minimal compliance with Commission procedural rules. RCW 80.04.110; WAC 480-09-420. SOS David Peter and David Peter, M.T.L. v. U.S. West Communications, Docket No. UT-900612, Order Dismissing

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Complaint (August 1990).

The Commission may dismiss a complaint that alleges almost no specific facts, that does not specify the occurrence of any act that violates any specific rule, or does not ask for relief from a specific violation, because it fails to meet the minimum procedural requirement. The public interest requires that the Commission dismiss a complaint that fails to specify violations of the law or the rules. Proceeding with a greatly defective complaint, in the absence of a clear indication that there is underlying substance, imposes unnecessary costs on the parties, the Commission, and the public. RCW 80.04.110; WAC 480-09-420. SOS David Peter and David Peter, M.T.L. v. U.S. West Communications, Docket No. UT-900612, Order Dismissing Complaint (August 1990).

WAC 480-09-425 Pleadings--Verification, time for filing, responsive pleadings, liberal construction, amendments.

The Commission may expand the issues in a proceeding when no party objects to the expansion and when consideration of the additional issues is in the public interest. WAC 480-09-425. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated) [prudence review], Eighteenth Supplemental Order (April 1994).

WAC 480-09-430 Intervention.

That an entity may have participated as an intervenor in a prior case does not entitle it to intervenor status in a subsequent proceeding. The Commission may weigh the pros and cons of participation in each proceeding. RCW 34.05.443; WAC 480-09-430. WUTC v. Washington Natural Gas Company, Docket No. UG-940814, Third Supplemental Order (August 1994).

That an entity may have presented expert testimony for an intervenor in a prior case has no bearing on whether it is entitled to party status in a later proceeding. RCW 34.05.443; WAC 480-09-430. WUTC v. Washington Natural Gas Company, Docket No. UG-940814, Third Supplemental Order (August 1994).

The interests of a private marketer of services related to gas use are not within those which the Commission is required to consider. RCW 34.05.443; WAC 480-09-430. WUTC v. Washington Natural Gas Company, Docket No. UG-940814, Third Supplemental Order (August 1994).

The Commission generally will not allow a person to intervene in a proceeding when the person does not have a substantial interest in the proceeding and has not show that its participation would be in the public interest. RCW 34.05.443; WAC 480-09-430. In re The Washington Water Power Company, Docket Nos. UE-941053, UE-941054, Fourth Supplemental Order (1994).

WAC 480-09-465 Settlement.

The Commission may approve a proposed settlement agreement when the terms and conditions are in the public interest. RCW 34.05.060; WAC 480-09-465. In re Puget Sound Power & Light Company, Docket No. UE-910689 [incentives]; WUTC v. Puget Sound Power & Light Company, Docket No. UE-940728 [PRAM 4] (September 1994).

The Commission will consider proposed settlements in general rate cases carefully, and will accept those agreements which it considers, after knowing consideration, to be consistent with the public interest and to meet the specific legal tests required for Commission action. RCW 34.05.060; WAC 480-09-465. WUTC v. Washington Natural Gas Company, Docket No. UG-931405; In re Washington Natural Gas Company, Docket No. UG-931442 (May 1994).

The Commission's acceptance of a settlement agreement does not necessarily constitute the adoption of the principles inherent in the agreement for purposes of future proceedings. RCW 34.05.060; WAC 480-09-465. WUTC v. Washington Natural Gas Company, Docket No. UG-931405; In re Washington Natural Gas Company, Docket No. UG-931442 (May 1994).

The Commission encourages parties to a proceeding involving the development, evaluation, and modification of an experimental regulatory mechanism to confer among themselves or with a designated person regarding the subject matter of the proceeding, and to report the results of their collaboration to the Commission. RCW 34.05.060; 80.28.025; WAC 480-09-465. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Secretary Letter Regarding PRAM Collaborative (April 1994).

The Commission does not guarantee that public service companies will achieve a specified rate of return, and a company's failure to achieve the rate of return it anticipated when it entered into a settlement agreement is not a reason to relieve it of obligations set out in a Commission-approved settlement agreement. RCW 80.28.020; WAC 480-09-465. In re GTE Northwest Incorporated and Contel of the Northwest, Inc., Docket No. UT-910499, Sixth Supplemental Order (February 1994).

Parties to settlements of formal proceedings are required to appear before the Commission in a hearing session to explain the details of their settlement. WAC 480-09-465. In re GTE Northwest Incorporated and Contel of the Northwest, Inc., Docket No. UT-910499, Sixth Supplemental Order (February 1994).

When the Commission adopts a settlement agreement in an order, it is an element of the order and subject to later interpretation by the Commission as any other element of its own orders. WAC 480-09-465. In re GTE Northwest Incorporated and Contel of the Northwest, Inc., Docket No. UT-910499, Sixth Supplemental Order (February 1994).

The Commission generally will look to its intention in adopting a settlement agreement rather than

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look outside the record or to principles of contract interpretation, to determine the intent of the parties or their obligations under a settlement agreement that the Commission previously accepted. WAC 480-09-465. In re GTE Northwest Incorporated and Contel of the Northwest, Inc., Docket No. UT-910499, Sixth Supplemental Order (February 1994).

WAC 480-09-465 (cont.)

The Commission may accept a stipulated settlement authorizing tariff revisions if the settlement is reasonable, just and fair, is consistent with applicable federal regulations, and its acceptance is in the public interest. RCW 34.05.060; 80.36.140; WAC 480-09-465. WUTC v. U S WEST Communications, Docket No. UT-920474, Third Supplemental Order (May 1993). [Here, the proposed tariff revisions are designed to establish a tariff for the maintenance and provisioning options available to property owners for intra-building network cable and network terminating wire.]

A Commission order accepting a settlement agreement stipulating the approval of affiliated interest agreements, as being in the best interest of the ratepayers and the companies, does not necessarily constitute Commission approval of rates set forth in the settlement agreement. RCW 34.05.060; 80.36.140; WAC 480-09-465. In re GTE Northwest Incorporated and Contel of the Northwest, Inc., Docket No. UT-910499, Second Supplemental Order (September 1992).

The Commission may base its approval of a settlement agreement in part on representations of a party that it will make specified service improvements by a specific date. RCW 34.05.060; WAC 480-09-465. In re GTE Northwest Incorporated and Contel of the Northwest, Inc., Docket No. UT-910499, Second Supplemental Order (September 1992).

The Commission may approve a proposed settlement agreement when the terms and conditions are in the public interest. RCW 34.05.060; WAC 480-09-465. WUTC v. Washington Natural Gas Company, Docket No. UG-920487, First Supplemental Order Accepting Settlement and Operating Agreement (June 1992).

A stipulated tariff settlement that requires a developer to either pay an advance charge and assume certain responsibilities relating to telephone service to undeveloped subdivisions or be liable for the full cost of construction is in the public interest because it shifts the risk associated with plant investment in undeveloped subdivisions from the general ratepayers to the developer. RCW 81.36.080; WAC 480-09-465. WUTC v. U S WEST Communications, Docket No. UT-901219, Second Supplemental Order (May 1991).

The Commission will approve a stipulation and settlement agreement that is consistent with applicable laws and regulations, that resolves issues presented before the Commission at hearing, and that is in the public interest. RCW 34.05.060; WAC 480-09-465. Integretel, Inc. v. U.S. West Communications, Docket No. UT-900246 (September 1990).

The Commission will accept a proposed settlement agreement that would resolve all of the issues addressed, in a manner consistent with the public interest. RCW 34.05.060; WAC 480-09-465. WUTC v. Fone America, Inc., Docket No. UT-900148, First Supplemental Order (July 1990).

After a review of the record, the Commission will accept a proposed settlement agreement that serves the best interests of ratepayers and the company. RCW 34.05.060; WAC 480-09-465. WUTC v. Washington Water Power Co., Docket No. UG-900190, Second Supplemental Order (July 1990).

WAC 480-09-465 (cont.)

Acceptance of a stipulation does not limit the Commission's or the parties' right to address in future cases those issues negotiated or deferred by the parties in stipulation. RCW 34.05.060; RCW 80.28.020; WAC 480-09-465. WUTC v. Washington Water Power Co., Docket No. UE-900093, Second Supplemental Order (June 1990).

The Commission encourages parties to cooperate in reaching a settlement, subject to Commission approval. The Commission will not approve a proposed settlement agreement just for the sake of agreement, but when the terms and conditions are demonstrably in the public interest. RCW 34.05.060; WAC 480-09-465. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S West Communications, Docket No. U-89-2698-F, Pacific Northwest Bell Telephone Co. d/b/a U.S. West Communications, Docket No. U-89-3245-P (Consolidated) Fourth Supplemental Order (January 1990).

The law does not require that all potentially interested persons in a given matter be involved in settlement negotiations. If reasonable discovery was allowed, full cross-examination of witnesses was exercised, all persons had the opportunity to testify and present evidence, and a full and complete record was developed, then the parties and interveners were afforded due process. RCW 34.05.060; WAC 480-09-465. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S West Communications, Docket No. U-89-2698-F, Pacific Northwest Bell Telephone Co. d/b/a U.S. West Communications, Docket No. U-89-3245-P (Consolidated) Fourth Supplemental Order (January 1990).

The Commission's acceptance of a settlement in a prior case does not establish precedent for the treatment of a component of the settlement that is again at issue in a later case. RCW 34.05.060; WAC 480-09-465. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

The Commission may accept a settlement and stipulation proposed by the parties in a general rate case if it finds the proposed settlement to be consistent with the public interest. RCW 80.28.020; WAC 480-09-465. WUTC v. South Bainbridge Water System, Inc., Docket No. U-87-1355-T et al., Third Supplemental Order (May 1988).

The Commission will accept a proposed settlement agreement when it is in the public interest. WAC 480-09-465. WUTC v. Pacific Power & Light Co., Docket No. U-87-1513-T, Fourth Supplemental Order (April 1988).

WAC 480-09-470 Stipulation as to facts.

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The Commission will reject a stipulation if questions of fact are disputed and the record does not contain sufficient evidence on which to base an informed judgment. The Commission may remand the matter to the presiding officer for certain additional proceedings to compile a complete record and revise the initial order accordingly. WAC 480-09-470. WUTC v. Sound Water Co., Inc., Docket No. U-89-2717-F (September 1990).

WAC 480-09-520 Formal investigation and fact-finding.

The procedural safeguards adopted by the Commission for proceedings for certain petitions for competitive classification under RCW 80.36.320 and 80.36.330 are reasonable and adequate to protect the due process rights of all parties potentially affected by a Commission decision in such a proceeding. RCW 80.36.320; 80.36.330; WAC 480-09-520. In re Electric Lightwave, Inc., Docket No. UT-920148, First Supplemental Order (October 1992).

WAC 480-09-610 Consolidation of proceedings.

The Commission may consolidate for hearing and decision proceedings involving the same parties in which the issues are related. WAC 480-09-610. In re Puget Sound Power & Light Company, Docket No. UE-910689 [incentives]; WUTC v. Puget Sound Power & Light Company, Docket No. UE-940728 [PRAM 4] (September 1994).

The Commission may consolidate for hearing and decision proceedings involving the same parties in which the issues are similar. WAC 480-09-610. In re U S WEST Communications, Inc., Docket Nos. UT-930074; UT-930307; UT-931378 (December 1993).

WAC 480-09-700 Hearings--Notice and failure to appear.

When a complainant establishes good cause for failure to appear at the originally-scheduled hearing, the Commission may vacate the dismissal order and reinstate the complaint. RCW 34.05.440; WAC 480-09-700. Bhatnagar v. U S West Communications Docket No. UT-900603, Decision and Order Vacating Order of Dismissal (December 1990).

WAC 480-09-735 Order of procedure.

It is unacceptable for a utility to limit other parties' opportunity to examine a proposal by waiting until rebuttal to present its alternative rate design plan. The Commission expects the company to present its proposals in its direct case. RCW 34.05.449; RCW 80.28.020; WAC 480-09-735; WAC 480-09-745. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

WAC 480-09-736 Hearing guidelines.

Cross references

- See also RCW 34.05.449 (Procedure at hearing).

When the parties' testimony has been pre-filed, a party who has chosen not to prefile direct testimony may not file rebuttal testimony, but may cross-examine witnesses and brief all the issues at the close of the hearing. WAC 480-09-736. In re Electric Lightwave, Inc., Docket No. UT-901029 (February 1991).

WAC 480-09-745 Exhibits and documentary evidence.

The Commission will give no consideration to evidentiary material submitted after the hearing record has closed. RCW 34.05.452; WAC 480-09-745. In re GTE Northwest, Inc., Docket No. U-89-3031-P, Second Supplemental Order (July 1990).

WAC 480-09-750 Rules of evidence.

The Commission routinely admits responses to questions asked "subject to check" unless a party, other than the one providing the response, makes a timely well-grounded objection. RCW 34.05.452; WAC 480-09-750. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Twentieth Supplemental Order [Prudence] (December 1994).

The appearance of a party's witness on behalf of another entity in the public testimony proceedings is ill-advised and strongly discouraged, and the Commission may strike the witness' testimony. RCW 34.05.449; WAC 480-09-750. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262**, Eighth Supplemental Order (July 1993).

It is improper to take official notice of testimony in a prior case when offered for the truth of the testimony. RCW 34.05.452; WAC 480-09-750. Washington STS, Ltd. v. U S WEST Communications, Inc., Docket No. UT-921213, Second Supplemental Order (June 1993).

On a motion for summary judgment, the moving party has the burden of demonstrating that there is no genuine issue as to any material fact related to an issue before the Commission. WAC 480-09-750. In re GCI Fibernet, Inc. Docket No. UT-901406, Fourth Supplemental Order (March 1991).

WAC 480-09-760 Interlocutory orders.

The Commission will deny a petition for interim rate relief when the Commission is not convinced that an actual emergency exists or that, without affirmative relief, the financial integrity and ability of the company to continue its operations will be compromised. WAC 480-09-760. WUTC v. Richardson Water Co., Docket No. U-88-2294-T, Second Supplemental Order (November 1988).

Discretionary interim review of an administrative law judge's order is not appropriate when no party

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is substantially and irreparably harmed by the order and there is no possible saving of time and expense resulting from accepting review that outweighs the costs of the review. See WAC 480-09-760 post-dating decision. In re GTE Northwest, Inc., Docket No. U-88-1719-F, Order Declining Jurisdiction (May 1988).

Interim review is discretionary with the Commission and should be undertaken rarely, when appropriate standards are met. See WAC 480-09-760 post-dating decision. In re GTE Northwest, Inc., Docket No. U-88-1719-F, Order Declining Jurisdiction (May 1988).

Interim rate relief is an extraordinary remedy and should be granted only on a reasonable showing that an actual emergency exists or that, without affirmative relief, the financial integrity and ability of the company to continue to obtain financing at reasonable costs will be compromised; the time frame to be considered also must have close proximity to the claimed emergency conditions. WAC 480-09-760. WUTC v. Ludlow Utilities Co., Docket No. U-87-1550-T, Second Supplemental Order (February 1988).

WAC 480-09-770 Briefs.

The Commission may permit the parties to a proceeding to amend their briefs to correct and clarify certain matters when the correction is consistent with the public interest. WAC 480-09-770. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-930511, Fourth Supplemental Order (April 1994).

WAC 480-09-780 Entry of initial and final orders--Administrative review.

The Commission allows parties answering petitions for administrative review to raise additional concerns with the initial order. The same principle applies to motions for reconsideration in cases where the Commission rules directly. RCW 34.05.470; WAC 480-09-780; 480-09-810. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Twentieth Supplemental Order [Prudence] (December 1994).

The Commission generally will not authorize the filing of a reply to answers to a petition for administrative review when further pleadings are unnecessary to a full exposition of the issues. RCW 34.05.464; WAC 480-09-420; 480-09-780. WUTC v. GTE Northwest Incorporated, Docket Nos. UT-921462; UT-921463; UT-921464; UT-921465, Fourth Supplemental Order (April 1994).

The term credibility is not applicable to expert testimony in the same way it is to lay testimony of the occurrence of an event. An expert witness' true belief in the validity of a theory does not make the theory valid, and viewing the witness' demeanor does not make a decider better able to judge whether the witness' theory explains observed phenomena. RCW 34.05.464; WAC 480-09-780. In re Paytel Northwest, Inc., Docket No. UT-920632, Fourth Supplemental Order as corrected by Fifth Supplemental Order (October 1993).

The Commission requires compliance with the deadlines for filing pleadings, and may reject or disregard a document that is not timely filed. RCW 34.05.464; WAC 480-09-780. Network Communications, Inc. v. U S WEST Communications, Inc., Docket No. UT-910286; U S WEST Communications, Inc. v. Hogan Communications, Docket No. UT-910781; Order Denying Complaints (February 1992).

WAC 480-09-810 Reconsideration.

The Commission may grant reconsideration to clarify a final order. RCW 34.05.470; WAC 480-09-810. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Twentieth Supplemental Order [Prudence] (December 1994).

The Commission allows parties answering petitions for administrative review to raise additional concerns with the initial order. The same principle applies to motions for reconsideration in cases where the Commission rules directly. RCW 34.05.470; WAC 480-09-780; 480-09-810. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Twentieth Supplemental Order [Prudence] (December 1994).

Fundamental fairness to the Commission and all parties requires that, once a computation in a final order in a rate case is challenged on reconsideration, other alleged mistakes in the same computation raised by other parties should be reviewed also. RCW 34.05.470; WAC 480-09-810. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Twentieth Supplemental Order [Prudence] (December 1994).

The Commission will deny reconsideration when the final order is fully documented and supported by the record and no other determinations or orders are necessary or required in the proceeding. RCW 34.05.470; WAC 480-09-810. In re GTE Northwest Incorporated and Contel of the Northwest, Inc., Docket No. UT-910499, Seventh Supplemental Order (April 1994).

On reconsideration, the Commission may clarify an earlier order. RCW 34.05.470; WAC 480-09-810. WUTC v. GTE Northwest Incorporated, Docket Nos. UT-921462; UT-921463; UT-921464; UT-921465, Fourth Supplemental Order (April 1994).

The Commission will strike new evidence that is presented for the first time on petition for reconsideration, without a motion for reopening. The proper place for the introduction of evidence is at hearing. RCW 34.05.470; WAC 480-09-810. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-921262; UE-920499; UE-920433, Fifteenth Supplemental Order (December 1993).

The Commission will not consider an affidavit attached to a petition for reconsideration that attempts

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to introduce new evidence. RCW 34.05.470; WAC 480-09-810. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-921262; UE-920499; UE-920433, Fifteenth Supplemental Order (December 1993).

The Commission may grant reconsideration to clarify an order. RCW 34.05.470; WAC 480-09-810.

WUTC v. Puget Sound Power & Light Company, Docket No. UE-930622, Third Supplemental Order (December 1993).

WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-921262; UE-920499; UE-920433, Fifteenth Supplemental Order (December 1993).

WUTC v. Washington Natural Gas Company, Docket Nos. UG-911236 & UG-911270, Fifth Supplemental Order (November 1992).

WAC 480-09-810 (cont.)

The Commission on reconsideration may correct a Commission error in a final order. RCW 34.05.470; WAC 480-09-810. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-921262; UE-920499; UE-920433, Fifteenth Supplemental Order (December 1993).

The Commission will not grant reconsideration to clarify an order if the order is clear on its face. RCW 34.05.470; WAC 480-09-810. In re U S WEST Communications, Inc., Docket No. UT-920085, Fourth Supplemental Order (June 1993).

A petition for reconsideration that merely challenges the Commission's evaluation of the evidence does not state a basis for reconsideration. WAC 480-09-810. WUTC v. Alderton-McMillin Water Supply, Inc., Docket Nos. UW-910563 & UW-911474, Second Supplemental Order Denying Reconsideration (June 1992).

A petition for reconsideration, clarification, or reopening that is not timely filed will be rejected. Filing is complete only when the document is delivered to the office of the secretary and stamped with the date and time. RCW 34.05.470; WAC 480-09-100; 480-09-810. In re Puget Sound Power & Light Company, Docket No. UE-910689, Commission Letter Rejecting Petition (January 1992).

A petition for reconsideration that does not state an error of law or fact in the challenged order, nor state any other basis for granting reconsideration, should be denied. WAC 34.05.470; 480-09-810. WUTC v. Pacific Northwest Bell Telephone Co. d/b/a U S WEST Communications, Docket No. U-89-2698-F, Order Denying Reconsideration (September 1991).

The Commission will deny an untimely petition for reconsideration. RCW 34.05.470; WAC 480-09-810. SOS David Peter and David Peter, M.T.L. v. U.S. West Communications, Docket No. UT-900247, Second Supplemental Order (October 1990).

The Commission will reject a petition for reconsideration that was not timely filed. RCW 34.05.470; WAC 480-09-810. In re GTE Northwest, Inc., Docket No. U-89-3031-P, Third Supplemental Order (August 1990).

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The Commission will deny a Petition for Reconsideration that does not state an error of law or fact in the final order, nor state any other basis for granting reconsideration and the company's requested relief. RCW 34.05.470; WAC 480-09-810. WUTC v. Pacific Northwest Bell Telephone Co., d/b/a/ U.S. West Communications, Docket Nos. U-89-2698-F, UT-90-0118, and U-89-3245-P (Consolidated) Sixth Supplemental Order (March 1990).

An affidavit attached to a Petition for Reconsideration that attempted to introduce new evidence will not be considered. RCW 34.05.470; WAC 480-09-810. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Fifth Supplemental Order (March 1990).

WAC 480-09-810 (cont.)

Reopening on reconsideration in a rate case to receive evidence on the current "bypass" status of one of the utility's large industrial customers would be appropriate, as it is a known and measurable factor. RCW 80.28.020; WAC 480-09-810. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Seventh Supplemental Order (December 1989).

The Commission, on reconsideration, may adopt proposed mathematical and technical corrections to a prior order, when the company shows that the corrections are proper. RCW 34.05.470; WAC 480-09-810. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Seventh Supplemental Order (December 1989).

A Petition for Reconsideration that fails to present any new legal or factual argument, states no basis for review of the Commission's earlier decision. RCW 34.05.470; WAC 480-09-810. WUTC v. Washington Water Power Co., Docket No. U-88-2380-T, Fourth Supplemental Order (November 1989).

The Commission will not reconsider an order challenged on the basis that the record is incomplete, when the order merely restates and applies policies the Commission has followed in prior orders and the petitioner had the opportunity to make a full record. RCW 34.05.470; WAC 480-09-810. In re Washington Water Power Co., Docket No. U-88-2363-P, Second Supplemental Order (October 1989).

WAC 480-09-820 Rehearing or reopening.

On a petition for clarification or reconsideration, the Commission may accept stipulated changes to the final order which are consistent with the final order and with the public interest. WAC 480-09-820. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Sixth Supplemental Order (December 1993).

The mere fact that a complainant disagrees with a final order does not state a basis for rehearing. RCW 80.04.200; WAC 480-09-820(1). Sharad M. Bhatnagar v. U S WEST Communications,

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Docket No. UT-900603, Order Denying Rehearing (July 1991).

The Commission will grant a petition for rehearing: (1) if there are changed circumstances injurious to the petitioner since the entry of the final order which were not considered by the Commission; or (2) to correct defects in the final order; or (3) for any good and sufficient cause which was not considered in the final order. RCW 80.04.200; WAC 480-09-820(1). Sharad M. Bhatnagar v. U S WEST Communications, Docket No. UT-900603, Order Denying Rehearing (July 1991).

The Commission may deny a motion to reopen the record to receive information concerning a wage increase, when the motion was filed too late to allow time for rebuttal and cross-examination before the statutory decision deadline. WAC 480-09-820. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

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UTILITIES GENERAL -- TARIFFS

WAC 480-80-040 Tariff.

Cross References

- ▶ Rate setting by Commission: See RCW 80.28.020 (gas/electric/water)
- ▶ Rate setting by Commission: See RCW 80.36.140 (telecommunications).
- ▶ Commission determination of value for ratemaking purposes of a utility's property:
See RCW 80.04.250.

WAC 480-80-045 Filing of banded tariffs.

Cross References

- ▶ Banded rates: See RCW 80.28.075 (gas/electric/water).
- ▶ Banded rates: See RCW 80.36.340 (telecommunications).

WAC 480-80-120 Notice to the public of tariff changes.

Cross References

- ▶ Tariff changes: See RCW 80.28.060 (gas/electric/water).
- ▶ Tariff changes: See RCW 80.36.100 (telecommunications).
- ▶ Notice to customers concerning hearing: See WAC 480-80-125.

WAC 480-80-125 Notice by utility to customers concerning hearing.

Cross References

- ▶ Tariff changes: See RCW 80.28.060 (gas/electric/water).
- ▶ Tariff changes: See RCW 80.36.100 (telecommunications).
- ▶ Notice to public of tariff changes: See WAC 480-80-120.

An electric utility that intends to reduce ECAC rates and increase other rates to achieve a net revenue increase, should allay customer confusion by publishing a brief and understandable summary of the issues presented. RCW 80.28.060; WAC 480-80-125. WUTC v. Puget Sound Power & Light Co., Docket No. U-89-2688-T, Second Supplemental Order (July 1989).

When the Commission permits a telephone company to withdraw tariff revision filings, the Commission will lift publication requirements of previous supplemental orders. WAC 480-80-125. WUTC v. General Telephone Co. of the Northwest, Inc., Docket No. U-87-1630-T et al., Fourth Supplemental Order (April 1988).

The Commission may temporarily waive compliance with the notice to customer requirement set forth in WAC 480-80-125 when potential balloting of area residents might make such a notice to customers confusing, and allow the company to give at a later time the notice required by the rule.

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WAC 480-80-125. WUTC v. General Telephone Co. of the Northwest, Inc., Docket No. U-87-1603, Second Supplemental Order (March 1988).

WAC 480-80-240 Without statutory notice.

The Commission's natural gas tracker rule, WAC 480-80-240, which allows local gas distribution companies to pass through reductions to their rate schedules in concert with reductions they receive from their suppliers, is intended to provide the pipeline and local distribution companies' customers greater flexibility in maintaining price parity between natural gas and alternate fuels.

WAC 480-80-240. Intalco Aluminum Corporation, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911477; Weyerhaeuser Company, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911481; WUTC v. Cascade Natural Gas Corporation, Docket No. UG-920062; Fourth Supplemental Order (December 1992).

The Commission usually will not consider rate design and rate spread issues in a tracker proceeding, because it does not have a cost of service study presented and parties do not have notice of such issues. WAC 480-80-240. Intalco Aluminum Corporation, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911477; Weyerhaeuser Company, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911481; WUTC v. Cascade Natural Gas Corporation, Docket No. UG-920062; Fourth Supplemental Order (December 1992).

A tracker filing is improper for shifting cost responsibilities among customer classes. WAC 480-80-240. Intalco Aluminum Corporation, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911477; Weyerhaeuser Company, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911481; WUTC v. Cascade Natural Gas Corporation, Docket No. UG-920062; Fourth Supplemental Order (December 1992).

WAC 480-80-240, which allows local gas distribution companies to pass through reductions to their rate schedules on one day's notice in concert with reductions they receive from their suppliers, is intended to provide the pipeline and local distribution companies' customers greater flexibility in maintaining price parity between natural gas and alternate fuels. RCW 80.28.020; WAC 480-80-240. WUTC v. Washington Natural Gas Co., Docket No. U-86-117, Third Supplemental Order (October 1986).

A "tracker" proceeding is not a proper or appropriate proceeding in which to propose shifting of cost responsibility among classes. There is not sufficient time in a "tracker" proceeding to give thorough consideration to the ramifications of any proposed rate restructure, and consideration of rate restructure issues is not consistent with the purpose of WAC 480-80-240 which is to allow purchased gas price variations to be passed through to consumers as quickly as possible. RCW 80.28.020; WAC 480-80-240. WUTC v. Washington Natural Gas Co., Docket No. U-86-117, Third Supplemental Order (October 1986).

WAC 480-80-335 Special contracts for electric, water, and natural gas utilities.

Both the banded rate statute, RCW 80.28.075, and the special contracts rule, WAC 480-80-335, are intended to be tools for gas companies to use in responding to competitive pressures. They are designed to encourage flexible pricing, a necessary step for the companies to meet competition and retain high volume customers. RCW 80.28.075; WAC 480-80-335. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-930511, Fourth Supplemental Order (April 1994).

In the absence of a real bypass threat, a gas company cannot justify the offer of a special contract to a customer; the decision to enter into such a contract is supportable only when the company makes a showing that it was faced with a credible bypass threat. WAC 480-80-335. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-930511, Fourth Supplemental Order (April 1994).

WAC 480-80-335 requires a showing that a special contract entered into by a utility does not result in discrimination between customers receiving like and contemporaneous service under substantially similar circumstances, and that the special contract provides for the recovery of all costs associated with the provision of the service. WAC 480-80-335. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-930511, Fourth Supplemental Order (April 1994).

A gas distribution company's special contract with a large industrial gas customer who has bypass alternatives may benefit core customers, because a consequence of a customer bypassing the local distribution system and connecting directly with an interstate pipeline is that core customers may bear the burden of large sunk costs for bypassed facilities, or of paying more than an appropriate share of overhead and general costs. WAC 480-80-335. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-930511, Fourth Supplemental Order (April 1994).

Generally, long run incremental costs (LRIC), plus a contribution to the system, will be considered in determining whether a special contract provides for the recovery of "all costs" under WAC 480-80-335. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-930511, Fourth Supplemental Order (April 1994).

The Commission may accept a recently updated feasibility study in lieu of a contemporaneous study as support for a special contract, depending on how recently it has been updated, the timing of negotiations, and other relevant factors. WAC 480-80-335. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-930511, Fourth Supplemental Order (April 1994).

WAC 480-80-335 specifically provides for separate handling of rate-making and contract approval matters; contract approval will not determine expense and revenues of the utility for ratemaking purposes. The Commission will review the prudence of a company's decision to enter into a special

contract in a subsequent general rate case. RCW 80.28.020; WAC 480-80-335. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-930511, Fourth Supplemental Order (April 1994).

WAC 480-80-335 (cont.)

The Commission will not rewrite or amend a special contract entered into by a utility, such as by changing the effective date provided in the contract. WAC 480-80-335. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-930511, Fourth Supplemental Order (April 1994).

A party's withholding of relevant information during special contract negotiations is grounds for Commission disapproval of the contract. WAC 480-80-335. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-930511, Fourth Supplemental Order (April 1994).

Contracts for natural gas transportation that are created under a banded rate approach may provide a practical means to nullify some industrial customers' incentives to by-pass the utility delivery system and avoid contributing to common system costs. RCW 80.28.075; WAC 480-80-335. WUTC v. The Washington Water Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

A local natural gas distribution company whose revenue requirements are allocated between Washington and Oregon customers on the basis of volume of consumption, and whose large end-users could be linked directly with the producers' pipeline, must have Commission approval of proposed contracts which would provide an industrial rate as an alternative to by-pass. The contracts will be evaluated in light of the consequences for both states' customers who have no realistic competitive supply alternatives, as well as the potential consequences for other local distribution companies seeking an appropriate response to by-pass competition in Washington. RCW 80.28.020; WAC 480-80-335. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C and U-88-2127-C, Fourth Supplemental Order (May 1989).

A local distribution company that is faced with the possibility of by-pass by industrial customers will not be prohibited from selling natural gas or its transportation at a price below any new banded rate so long as any discounts are made under contracts approved by the Commission, provided in the context of the banded rate statute, and any cost or resulting revenue shortfall is borne by the company's shareholders. RCW 80.28.075; WAC 480-80-335. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C and U-88-2127-C, Fourth Supplemental Order (May 1989).

A proposed contract for natural gas service that would provide an industrial rate as an alternative to by-pass, will be evaluated in light of the implications for the company's customers who have no realistic competitive supply alternatives, as well as the implications for other local distribution companies seeking an appropriate response to by-pass competition in Washington. RCW 80.28.020; RCW 80.28.074; WAC 480-80-335. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C and U-88-2127-C, Fourth Supplemental Order (May 1989).

Contracts for natural gas transportation that are created under a banded rate approach may provide a practical means to nullify some industrial customers' incentives to by-pass the utility delivery system and avoid contributing to common system costs. RCW 80.28.075; WAC 480-80-335. WUTC v. Northwest Natural Gas Co., Docket Nos. U-88-2126-C and U-88-2127-C, Fourth Supplemental Order (May 1989).

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GAS COMPANIES -- OPERATIONS

WAC 480-90-026 Tariffs.

Cross references

- Rate setting by Commission: See RCW 80.28.020.

WAC 480-90-031 Accounting.

The Commission generally will reject the use of a tracker mechanism to recover safety compliance-related expenditures; use of a tracker is limited to expenses that are easily measurable, beyond the company's ability to control, and are both substantial and essential to the company's operations. RCW 80.28.020; WAC 480-90-031. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Fourth Supplemental Order (September 1993).

The Commission will disallow the expense of advertising that is comparative and promotional in nature and does not promote safety, conservation, or any other permissible subject under the Commission's rule on advertising, WAC 480-90-043. RCW 80.28.020; WAC 480-90-031; 480-90-043. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Fourth Supplemental Order (September 1993).

Merely promotional marketing expenses will not be allowed in calculating a company's operating expenses. RCW 80.28.020; WAC 480-90-031; 480-90-043. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Fourth Supplemental Order (September 1993).

The Commission may disallow incentive employee pay expenses when the payments are not tied directly to goals that clearly and directly benefit ratepayers. RCW 80.28.020; WAC 480-90-031. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Fourth Supplemental Order (September 1993).

The Commission's affirmation that benchmark discounts ordered in an earlier proceeding were fair, just and reasonable does not foreclose reexamination, in an appropriate proceeding, of the competitive conditions existing, and reflecting the existence or nonexistence of competition in rates. Industrial rates set at an amount lower than parity as a result of competitive pressure may be set at an amount greater than parity when those pressures no longer exist. RCW 80.28.020; WAC 480-90-026; 480-90-031. Intalco Aluminum Corporation, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911477; Weyerhaeuser Company, et al. v. Cascade Natural Gas Corporation, Docket No. UG-911481; WUTC v. Cascade Natural Gas Corporation, Docket No. UG-920062; Seventh Supplemental Order (February 1993).

A Commission order authorizing an accounting treatment of costs does not constitute pre-approval of recovery of such costs in subsequent rate proceedings. As with other adjustments, the company bears the burden of proving the fairness, justness and reasonableness of the costs in subsequent rate proceedings. [Here, the Commission approved an accounting treatment for electric lost margin amounts arising from the company's implementation of a conservation program, and accounting treatment for gas conservation investment.] RCW 80.04.300; 80.28.020; WAC 480-90-031; 480-100-031. In re The Washington Water Power Company, Docket Nos. UE-920351-T, UE-920352-P, UE-920353-T, UE-920354-P, Order Approving Tariff Revisions and Authorizing Accounting Treatment (May 1992).

WAC 480-90-036 Finance--Securities, affiliated interests, transfers of property.

The Commission may grant a requested change in the use of proceeds from promissory notes issued by a utility pursuant to credit agreements with banks if the change is not adverse to the public interest. WAC 480-90-036. In re Cascade Natural Gas Corp., Docket No. U-87-851-AS, First Supplemental Order (June 1987).

WAC 480-90-043 Advertising.

The Commission will disallow the expense of advertising that is comparative and promotional in nature and does not promote safety, conservation, or any other permissible subject under the Commission's rule on advertising, WAC 480-90-043. RCW 80.28.020; WAC 480-90-031; 480-90-043. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Fourth Supplemental Order (September 1993).

Merely promotional marketing expenses will not be allowed in calculating a company's operating expenses. RCW 80.28.020; WAC 480-90-031; 480-90-043. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Fourth Supplemental Order (September 1993).

WAC 480-90-046 Application for service.

WAC 480-90-046 prevents a gas company's customers from remetering gas for resale, absent exemption from the rule, and may apply to restrict gas resale for vehicle fuel. WUTC v. Washington Natural Gas Company, Docket No. UG-920840, Sixth Supplemental Order (December 1993).

WAC 480-90-056 Refusal of service.

A gas company should, to the extent possible, make transportation service available to end-use customers without otherwise prejudicing its obligation to provide service to its core group of sales customers. The extent of its obligation does not rise to the level of "common carrier" status whereby the company would be required, under any circumstances, to provide transportation service to all who request it. RCW 80.28.010; WAC 480-90-056. WUTC v. The Washington Water

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Power Company, Docket No. UG-901459, Third Supplemental Order (March 1992).

WAC 480-90-191 Least cost planning.

The Commission may accept a gas company's integrated resource plan that complies with the company's obligation under the Commission's gas least cost plan rule. WAC 480-90-191. In re Northwest Natural Gas Company, Docket No. UG-910922, Commission Letter Accepting Plan (July 1994).

The Commission may accept a gas company's least cost plan that complies with the company's obligation under the Commission's gas least cost plan rule. WAC 480-90-191. In re Washington Natural Gas Company, Docket No. UG-931143, Commission Letter Accepting Plan (July 1994).

The Commission's least cost planning rule for gas utilities, WAC 480-90-191, requires each utility to assess future loads and the options available to meet those loads, to acquire resources at the lowest cost to its customers consistent with meeting these loads at appropriate levels of reliability, and to report the results of its planning process in a "least cost plan" prepared in consultation with the public and Commission staff. In re Northwest Natural Gas, Docket No. UG-910922, Commission Letter of Comment on Least Cost Plan (May 1994).

The Commission's determination whether to accept or reject a gas least cost plan should not be taken as an assessment of the reasonableness of any element of the plan, nor does it constitute a determination that any resource acquisition is prudent or imprudent. These determinations are properly reserved for ratemaking. RCW 80.28.020; WAC 480-90-191. In re Northwest Natural Gas, Docket No. UG-910922, Commission Letter of Comment on Least Cost Plan (May 1994).

Since supplying natural gas is an interrelated set of components and activities that necessarily must be considered together, a gas least cost plan should not exclude company actions such as curtailment or interruption policies; line extension and system expansion policies; dispatch; make or buy construction decisions; rate structure or rate spread; annual construction program; etc. Neither traditional corporate decision processes, management expertise, nor regulatory oversight processes, adequately substitute for the thoughtful foresight and integrated perspective that are embodied in a least cost plan. WAC 480-90-191. In re Northwest Natural Gas, Docket No. UG-910922, Commission Letter of Comment on Least Cost Plan (May 1994).

The gas least cost planning rule not only requires the filing of a document entitled "least cost plan", but also imposes the affirmative obligation to comply with the principles set forth in the rule and to take actions consistent with them. WAC 480-90-191. In re Northwest Natural Gas, Docket No. UG-910922, Commission Letter of Comment on Least Cost Plan (May 1994).

Each gas least cost plan required by the Commission's least cost planning rule for gas utilities, WAC 480-90-191, must include a forecast and assessment of future loads and the demand and supply-side resource options available to meet those loads, the integration of the demand forecasts and resource

evaluations into a 20-year plan, and a two-year action plan describing strategies designed to meet current and future needs at the lowest cost to the utility and its ratepayers. In re Washington Water Power Company, Docket No. UG-910921, Commission Letter of Acceptance (January 1994).

WAC 480-90-191 (cont.)

The Commission does not undertake to "approve" any of the plans filed pursuant to WAC 480-90-191; rather, the Commission "accepts" or "rejects" a particular plan as being consistent or inconsistent with the requirements of the rule. The Commission's letter of acceptance should not be taken either as an endorsement or condemnation of any particular element of the plan. In re Washington Water Power Company, Docket No. UG-910921, Commission Letter of Acceptance (January 1994).

A utility has an ongoing responsibility to acquire resources at the lowest cost to its customers consistent with appropriate levels of reliability. It is not expected to follow the letter of its least cost plan in acquiring resources. It is expected to pursue unanticipated opportunities that arise if the opportunity is least cost and beneficial to its ratepayers. RCW 80.28.020 (prudence); WAC 480-90-191. In re Washington Water Power Company, Docket No. UG-910921, Commission Letter of Acceptance (January 1994).

The Commission's least cost planning rule for gas utilities, WAC 480-90-191, requires each utility to assess future loads and the options available to meet those loads, to acquire resources at the lowest cost to its customers consistent with meeting these loads at appropriate levels of reliability, and to report the results of its planning process in a "least cost plan" prepared in consultation with the public and Commission staff. In re Washington Natural Gas Company, Docket No. UG-910150, Commission Letter of Acceptance (January 1993).

The Commission will monitor a utility's success in meeting its responsibility to acquire resources at the lowest cost to its customers consistent with meeting loads at appropriate levels of reliability, in rate filings and in other ways. WAC 480-90-191. In re Washington Natural Gas Company, Docket No. UG-910150, Commission Letter of Acceptance (January 1993).

The "least cost plan" that a utility must file pursuant to WAC 480-90-191 should contain a complete and thorough description, both of the planning process and of the company's current resource acquisition process. For customers with alternative energy options, it should indicate the level of reliability they can expect in the coming years, together with an indication of expected costs. In re Washington Natural Gas Company, Docket No. UG-910150, Commission Letter of Acceptance (January 1993).

Although the Commission is not required by the natural gas least cost planning rule, WAC 480-90-191, to take any action on a filed plan, it will review plans to see if they meet the minimum requirements of the rule, or if they do not, whether there is acceptable compliance given the circumstances. The Commission's acceptance or rejection of a plan is not an assessment of the reasonableness of any element of the plan, nor does it constitute a determination that any resource

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acquisition or action is prudent or imprudent. In re Washington Natural Gas Company, Docket No. UG-910150, Commission Letter of Acceptance (January 1993).

WAC 480-90-191 (cont.)

The Commission may reject a least cost plan that does not demonstrate that: the resources selected for inclusion in the integrated resource plan are least cost; the company assessed the demand-side potential of each customer class; the company's cost-effectiveness test was applied consistently to both supply- and demand-side resources. WAC 480-90-191. In re Washington Natural Gas Company, Docket No. UG-910150, Commission Letter of Rejection (November 1991).

The Commission's least cost planning rule for gas utilities requires each utility to assess future loads and the options available to meet those loads, to acquire resources at the lowest cost to customers consistent with meeting those loads at appropriate levels of reliability, and to report the results of its planning process in a least cost plan. WAC 480-90-191.

In re Washington Natural Gas Company, Docket No. UG-910150, Commission Letter of Rejection (November 1991).

In re Cascade Natural Gas Corporation, Docket No. UG-910148, Commission Letter of Acceptance (September 1991).

In re Northwest Natural Gas Company, Docket No. UG-910149, Commission Letter of Acceptance (August 1991).

The Commission encourages utilities to take advantage of existing incentives for demand side management. WAC 480-90-191. In re Northwest Natural Gas Company, Docket No. UG-910149, Commission Letter of Acceptance (August 1991).

Any natural gas utility tariff provision requiring notice or minimum term should be designed to accommodate the company's least cost planning responsibilities. The Commission will consider the company's least cost plan, developed under WAC 480-90-191, in setting tariff notice or term requirements. WUTC v. Washington Natural Gas Company, Docket No. UG-900210, Second Supplemental Order (January 1991).

When the Commission considers the reasonableness of the costs associated with a natural gas company's acquisition of resources, the Commission may require that the company provide a cost analysis of alternatives to any components of its resource portfolio and that tariffs spell out the details of company-run and company-financed conservation programs. WAC 480-90-191. WUTC v. Washington Water Power Co., Docket No. U-89-3105-T, First Supplemental Order (December 1989).

Least Cost Planning rules require that each natural gas company develop a consistent method for

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calculating the cost effectiveness of improvements in the efficient use of gas, as an option for meeting the needs of different customer classes. The Commission expects the company to include this method in its least cost plan and provide a means for assessing when company-financed conservation programs should be implemented. WAC 480-90-191. WUTC v. Washington Water Power Co., Docket No. U-89-3105-T, First Supplemental Order (December 1989).

WAC 480-90-191 (cont.)

In that the least cost planning rule, WAC 480-90-191, requires gas utilities to develop a strategic gas acquisition plan that will more accurately reflect price sensitivity of interruptible loads, the Commission rejects elimination of the distinction between firm and interruptible gas service in spreading rates. RCW 80.28.020; WAC 480-90-191. WUTC v. Cascade Natural Gas Corp., Docket No. U-86-100, Fourth Supplemental Order [Rate Design] (May 1987).

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GAS COMPANIES -- SAFETY

When a natural gas company has taken steps to document that all pipes and joints meet minimum state and federal safety requirements for the maximum allowable operating pressure for which such materials were designed, and thus public safety concerns addressed in an emergency order have been resolved, the Commission may accept a proposed settlement agreement and allow the company to resume construction of its pipeline. RCW 80.28.210; WAC 480-93-010. WUTC v. ARCO Western Gas Pipeline Co., Docket Nos. 900878, UG-900883-F (August 1990).

The Commission will rescind authority to construct and operate a gas pipeline when Commission inspection shows that pipe and joints lack specification markings that would allow the Commission to make a safety determination. RCW 80.28.210; WAC 480-93-017. In re ARCO Western Gas Pipeline Co., Docket No. 900878, Emergency Adjudicative Proceeding (August 1990).

The Commission will not allow the installation of a 450 p.s.i.g. gas pipeline within 100 feet of a building intended for human occupancy, when a high pressure gas line is not necessary to supply the gas needed, and when the operation of a high pressure gas line is not prudent for safety reasons. RCW 80.28.210; WAC 480-93-030. In re Washington Natural Gas Co., Docket No. UG-900520 (August 1990).

The Commission may waive clearance requirements of WAC 480-93-030 for the installation of a 500 p.s.i. gas pipeline located within 100 feet of buildings intended for human occupancy. WAC 480-93-030. In re Washington Water Power Co., Docket No. U-86-126, Order Granting Waiver (October 1987).

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ELECTRIC COMPANIES

WAC 480-100-031 Accounting.

Cross references

- ▶ Rate setting by Commission: See RCW 80.28.020 (gas/electric/water).
- ▶ Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.
- ▶ Commission's control over expenditures: See RCW 80.04.300 -.310.
- ▶ Burden on utility to show rates are just, fair, reasonable: See RCW 80.04.130.
- ▶ Temporary rates during suspension period: See RCW 80.04.130.
- ▶ Commission shall adopt policies to encourage cogeneration, conservation, and production from renewables: See RCW 80.28.025.

The Commission will disallow from conservation rate base the expense of advertising which is merely designed to raise a utility's credibility and which is not shown to have benefitted the ratepayers. RCW 80.28.025; WAC 480-100-031; 480-100-043. In re Puget Sound Power & Light Company, Docket No. UE-910689 [incentives]; WUTC v. Puget Sound Power & Light Company, Docket No. UE-940728 [PRAM 4], Third Supplemental Order (September 1994); clarified, Fourth Supplemental Order (December 1994).

Permitting a utility to use a certain accounting treatment for expenses between rate cases does not commit the Commission to allowing recovery of the amounts recorded until the particular expenses have been properly examined in a general rate case. RCW 80.28.020; WAC 480-100-031. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-921262; UE-920499; UE-920433, Fifteenth Supplemental Order (December 1993).

Under-recovery from one period of an experimental periodic rate adjustment mechanism may appropriately be deferred for recovery over a period of several years in order to promote rate stability. RCW 80.28.025; WAC 480-100-031; 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-930622, First Supplemental Order [PRAM 3 Order] (September 1993).

A company may not create a regulatory asset through deferral accounting without a prior Commission accounting order authorizing such action. RCW 80.04.250; 80.04.300; WAC 480-100-031. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

A company may not recover AFUDC on preliminary survey and investigation costs. RCW 80.04.250; 80.28.020; WAC 480-100-031. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

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WAC 480-100-031 (cont.)

Expenses associated with customer relations should not be capitalized or included in conservation accounts. RCW 80.04.250; 80.04.300; 80.28.020; WAC 480-100-031; 480-100-043. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

The Commission may require reasonable accounting changes in continuing an experimental periodic rate adjustment mechanism. RCW 80.04.300; 80.28.025; WAC 480-100-031; 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

Under-recovery from one period of an experimental periodic rate adjustment mechanism may appropriately be deferred for recovery over a period of several years in order to promote rate stability. RCW 80.28.025; WAC 480-100-031; 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-920630, First Supplemental Order [PRAM 2 order] (September 1992).

A Commission order authorizing an accounting treatment of costs does not constitute pre-approval of recovery of such costs in subsequent rate proceedings. As with other adjustments, the company bears the burden of proving the fairness, justness and reasonableness of the costs in subsequent rate proceedings. Here, the Commission approved an accounting treatment for electric lost margin amounts arising from the company's implementation of a conservation program, and accounting treatment for gas conservation investment. RCW 80.04.300; 80.28.020; WAC 480-90-031; 480-100-031. In re The Washington Water Power Company, Docket Nos. UE-920351-T, UE-920352-P, UE-920353-T, UE-920354-P, Order Approving Tariff Revisions and Authorizing Accounting Treatment (May 1992).

A Commission order authorizing an accounting and potential ratemaking treatment of costs does not constitute a determination of the reasonableness of the costs or their proper treatment in a subsequent rate case. Such accounting and potential ratemaking treatment will be subject to review in subsequent rate proceedings; as with other adjustments, the company will bear the burden of proving the fairness, justness, and reasonableness of the costs and their proper treatment. Here, the Commission approved an accounting and potential ratemaking treatment of federal income taxes to be paid by the company related to tax benefits associated with conservation expenditures during a prior period. RCW 80.04.300; 80.28.020; WAC 480-100-031. In re Puget Sound Power & Light Company, Docket No. UE-920349, Order Authorizing Accounting Treatment (April 1992).

A Commission order allowing the costs of a proposed acquisition to be recorded on a company's books of account in a certain manner is not a determination on the merits of the proposed transaction or the amount of the investment that may be included in ratebase in a future proceeding. The appropriate amount, if any, of the purchase price to be included in the company's ratebase must be determined in a rate or other appropriate proceeding. RCW 80.04.250; 80.04.300; 80.28.020;

WAC 480-100-031. In re Pacificorp, d/b/a Pacific Power & Light Company, Docket No. UE-911186(P), Order Granting Petition (January 1992).

WAC 480-100-031 (cont.)

The Commission may approve a filing that amortizes, over a suitable period of time, the Deferred Energy Costs remaining on an electric utility company's books following termination of the Energy Cost Adjustment Clause schedule. RCW 80.04.300; RCW 80.28.020; WAC 480-100-031. WUTC v. Puget Sound Power & Light Co., Docket No. U-89-3572-T, First Supplemental Order (July 1990).

The Commission will approve an electric utility's most recent calculation of its Accumulated Deferred Investment Tax Credits, upon a finding that the submission is consistent with a prior order in the cause and is consistent with prior ADITC calculations reviewed and approved by the Commission. RCW 80.28.020; WAC 480-100-031. In re Puget Sound Power & Light Co., Docket No. U-86-115, Fifth Supplemental Order (July 1990).

When a utility's method of calculating the Accumulated Deferred Income Tax Credits to be credited to its non-utility income follows the requirements of an earlier Commission decision, that method may be approved and booking of the amounts may be authorized. RCW 80.04.300; WAC 480-100-031. In re Puget Sound Power & Light Co., Docket No. U-86-115, Fourth Supplemental Order (January 1989).

The Commission will accept the terms of a proposed settlement stipulation when the settlement is proper and consistent with the public interest. Former WAC 480-08-110; WAC 480-100-031. In re Washington Water Power Co., Docket No. U-87-795-P, Decision and Order (August 1987).

The Commission will grant a utility's request to modify the amortization methods that it uses for treatment of certain investment tax credits when the Commission concludes that the modification is in the public interest. RCW 80.04.300; WAC 480-100-031. In re Application of Puget Sound Power & Light Co., Docket No. U-86-115, Second Supplemental Order [Reconsideration] (February 1987).

When a utility's proposed accounting treatment of deferred investment tax credits (ITC) risks disallowance by the IRS, the Commission may approve it conditioned on the utility obtaining a favorable IRS ruling before implementing the change. RCW 80.04.300; WAC 480-100-031. In re Application of Puget Sound Power & Light Co., Docket No. U-86-115, Second Supplemental Order [Reconsideration] (February 1987).

The Commission will deny authorization of an accounting change when the utility has not proved that the proposed variation from the otherwise appropriate method of accounting would be in the public interest. RCW 80.04.300; WAC 480-100-031. In re Puget Sound Power & Light Co., Docket No. U-86-115, Decision and Order (December 1986).

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WAC 480-100-031 (cont.)

Although the Commission generally prescribes the Uniform System of Accounts for utility accounting purposes, the Commission is not bound to follow the Uniform System of Accounts for ratemaking purposes when the public policies affecting the setting of rates differ from the public policies regarding the recording of financial activity. RCW 80.04.300; RCW 80.28.020; WAC 480-100-031. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

The Commission may allow a utility to use budgeted figures in lieu of actual figures to determine future operations if budgeted information is all that is available. RCW 80.04.300; RCW 80.28.020; WAC 480-100-031. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

WAC 480-100-036 Finance - Securities, affiliated interests, transfer of property.

Cross References

- Affiliated interests: See Chapter 80.16 RCW.

WAC 480-100-041

When a significant number of non-English-speaking customers live in a utility's service area, the Commission may require the utility to make appropriate arrangements to accommodate the needs of these customers. The Commission also may direct that the utility provide usable information regarding provision of electric service to these customers. WAC 480-100-041. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

To facilitate customers of an electric utility to be able to call the Commission with complaints without charge, the Commission may direct that the Commission's toll-free telephone number be placed on billing notices. The commission also may direct the utility to put its own telephone number on the bills to encourage customers to resolve their own disputes with the utility, if possible, before contacting the Commission. WAC 480-100-041. WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

WAC 480-100-043 Advertising

The Commission will disallow from conservation rate base the expense of advertising which is

merely designed to raise a utility's credibility and which is not shown to have benefitted the ratepayers. RCW 80.28.025; WAC 480-100-031; 480-100-043. In re Puget Sound Power & Light Company, Docket No. UE-910689 [incentives]; WUTC v. Puget Sound Power & Light Company, Docket No. UE-940728 [PRAM 4], Third Supplemental Order (September 1994); clarified, Fourth Supplemental Order (December 1994).

WAC 480-100-043 (cont.)

Expenses associated with customer relations should not be capitalized or included in conservation accounts. RCW 80.04.250; 80.04.300; 80.28.020; WAC 480-100-031; 480-100-043. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

Advertisements which do not provide information about energy efficiency or conservation, and which attempt to portray electricity as a better alternative to gas, are not allowable in a utility company's rate base or its operating expense. RCW 80.04.250; RCW 80.28.020; WAC 480-100-043. WUTC v. Puget Sound Power & Light Co., Docket Nos. U-89-2688-T and U-89-2955-T, Third Supplemental Order (January 1990).

The Commission will accept a public service company's proposed adjustment for advertising when the company has met its burden of proof with regard to the adjustment and has excluded items of a political or promotional nature. RCW 80.28.020; WAC 480-100-043. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

The Commission will scrutinize expenditures for membership dues paid by an electric company to organizations, to determine whether they are for allowable purposes. RCW 80.28.020; WAC 480-100-043. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

Only that which can truly be defined as conservation advertising may be included in an electric company's rate base. RCW 80.04.250; WAC 480-100-043. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

In a general rate case, the Commission will evaluate a utility's advertising expenses according to whether the advertising has demonstrated benefits to ratepayers. Ratepayers should not be required to pay for advertising that merely enhances the company's image. However, ratepayers should be required to pay for costs imposed by requirement of law, such as information regarding a moratorium on disconnection of service enacted by the legislature. RCW 80.28.020; WAC 480-100-043. WUTC v. Washington Water Power Co., Docket No. U-85-36, Third Supplemental Order (April 1986).

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WAC 480-100-071 Discontinuance of service.

Although an electric utility may have committed no violation of law or regulation material to the termination of a private complainant's electrical service, the Commission may, on its own motion, engage in a full review of the matter, and it may assess a penalty if it finds a violation of law or regulation. RCW 80.04.405; WAC 480-100-071. Theophal v. Puget Sound Power & Light Co., Docket No. U-87-1492-T, Order Dismissing Complaint (August 1988).

A utility violates Commission rule when it disconnects a customer's service without cause. WAC 480-100-071. Rose Monroe v. Puget Sound Power & Light Co., Docket No. U-85-70, Order Affirming Proposed Order (October 1986).

When an electric company knows that a customer has a medical condition that might affect service termination rights, it must afford the customer sufficient opportunity to demonstrate the nature of the medical condition before disconnecting service. WAC 480-100-071. Rose Monroe v. Puget Sound Power & Light Co., Docket No. U-85-70, Order Affirming Proposed Order (October 1986).

A deprivation of electrical service resulting from wrongful disconnection is a recurring violation each day it continues, and the Commission may assess a penalty for each day the violation continues. RCW 80.04.380; WAC 480-100-071. Rose Monroe v. Puget Sound Power & Light Co., Docket No. U-85-70, Order Affirming Proposed Order (October 1986).

WAC 480-100-072 Payment arrangements and responsibilities.

An electric company violates WAC 480-100-072 when it disconnects a low income customer who is eligible for participation in a winter moratorium program without having given the customer a copy of the moratorium program plan. WAC 480-100-072. Rose Monroe v. Puget Sound Power & Light Co., Docket No. U-85-70, Order Affirming Proposed Order (October 1986).

WAC 480-100-101 Form of bills.

The Commission will approve a settlement agreement that authorizes an electric utility to pro-rate bills following changes in meter reading dates when tariff revisions filed in the form of those attached to the agreement would be reasonable and just. Former WAC 480-08-110; WAC 480-100-101. WUTC v. Puget Sound Power & Light Co., Docket No. U-86-87, First Supplemental Order

(March 1987).

WAC 480-100-251 Least cost planning.

Cross references

- ▶ Rate setting by Commission: See RCW 80.28.020 (gas/electric/water).
- ▶ Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.
- ▶ Commission's control over expenditures: See RCW 80.04.300 -.310.
- ▶ Burden on utility to show rates are just, fair, reasonable: See RCW 80.04.130.
- ▶ Commission shall adopt policies to encourage cogeneration, conservation, and production from renewables: See RCW 80.28.025. See also RCW 80.28.260.

Although a least cost plan may contain information helpful in determining the prudence of resource selection, it is only one consideration in the evaluation. The Commission's acceptance of a company's least-cost plan does not represent a finding of prudence of a particular resource selection. The least-cost planning process is not sufficiently rigorous or specific to support an independent finding of prudence. RCW 80.28.040; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Nineteenth Supplemental Order [Prudence Order] (September 1994).

An electric company's least cost plan and informational avoided cost schedule establish only general planning data, and evidence that resource acquisitions were consistent with the company's least cost plan and were priced below avoided cost is not sufficient to demonstrate prudence. RCW 80.28.040; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Nineteenth Supplemental Order [Prudence Order] (September 1994).

A least cost plan is not intended to be a document upon which prudence of new resource acquisitions could be demonstrated, and a least cost plan usually is not rigorous enough to demonstrate prudence. The Commission's acceptance of a company's least cost plan does not represent a finding of prudence of a particular resource acquisition. RCW 80.28.020; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Eleventh Supplemental Order (September 1993).

The Commission's least cost planning rule for electric utilities requires each utility to assess future

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loads and the options available to meet those loads, to acquire resources at the lowest cost to its customers consistent with meeting those loads at appropriate levels of activity, and to report the results of the planning process in a least cost plan. WAC 480-100-251. In re Pacificorp, Docket No. UE-910152, Commission Letter of Comment on Least Cost Plan (June 1993).

The Commission does not undertake to "approve" any of the least cost plans filed pursuant to WAC 480-100-251, and its letter commenting on a plan is not an endorsement of any element of the plan. In re Pacificorp, Docket No. UE-910152, Commission Letter of Comment on Least Cost Plan (June 1993).

WAC 480-100-251 (cont.)

A periodic rate adjustment mechanism (PRAM) is an experimental regulatory mechanism intended to reduce barriers to least cost planning. A goal of the mechanism is that the public be able to see that aligning company profits with a least cost path results in least cost to the customers as well as revenue stability for the company. In furthering that goal, the Commission may approve reasonable accounting changes during the experiment. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-920630, Second Supplemental Order [granting expedited reconsideration] (October 1992).

Under an experimental periodic rate adjustment mechanism (PRAM) intended to reduce barriers to least cost planning, the Commission may approve a settlement that provides a reasonable means to examine the issue of the cost effectiveness of conservation programs. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-920630, Third Supplemental Order [clarifying PRAM 2] (October 1992).

An experimental mechanism to attain the goals of least cost planning is flawed if it creates perverse economic incentives for the company. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-920630, First Supplemental Order [PRAM 2 order] (September 1992).

The Commission actively encourages the state's investor-owned utilities to meet demands for service with a least-cost resource mix including both generating resources and improvements in the efficient use of electricity, and requires the electric utilities it regulates to engage in least-cost planning. RCW 80.28.025; 80.28.260; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

The Commission pursues a regulatory structure that adequately aligns utilities' pursuit of profits with least cost planning. RCW 80.28.025; 80.28.260; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

To encourage least cost planning, the Commission pursues regulatory mechanisms that permit

adjustment for changes in revenue and costs beyond a utility's control, permit purchased power cost recovery, permit conservation cost recovery, and provide incentives for least cost supply and demand-side acquisitions. RCW 80.28.025; 80.28.260; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

Any experiments in regulatory restructuring to reduce regulatory barriers to least cost planning should favor the utility's least cost plan being its most profitable path, and its most profitable path being its least cost path. RCW 80.28.025; 80.28.260; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

WAC 480-100-251 (cont.)

A utility's supply-side incentives should be structured to reward the company for acquiring purchased power at least cost. RCW 80.28.025; 80.28.260; WAC 480-100-251. In re Puget Sound Power & Light Company, Docket No. UE-910689, First Supplemental Order [incentive order] (January 1992).

A periodic rate adjustment mechanism should permit the adjustment of rates to reflect increased costs and to pass through savings to customers, while encouraging least cost planning and conservation. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket No. UE-910626, First Supplemental Order [PRAM 1 order] (September 1991).

The Commission's least cost planning rule for electric utilities requires each utility to assess future loads and the options available to meet those loads, to acquire resources at the lowest cost to its customers consistent with meeting those loads at appropriate levels of activity, and to report the results of its planning process in a least cost plan. WAC 480-100-251. In re Washington Water Power Company, Commission Letter of Acceptance (June 1991).

To implement least cost planning as a significant policy goal, electric company tariffs should provide customers with appropriate price signals that encourage least cost planning. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-901183-T; UE-901184-P, Third Supplemental Order [decoupling order] (April 1991).

An electric company may implement measures to decouple its revenues from sales on an experimental basis when the Commission finds that the measures will encourage conservation and least cost planning, will reduce incentives to pursue aims inconsistent with those goals, and are consistent with other regulatory requirements and policies. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-901183-T; UE-901184-P, Third Supplemental Order [decoupling order] (April 1991).

Experimental regulatory mechanisms intended to reduce barriers to least cost planning should

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attempt to assure that a utility's most profitable path is its least cost path. An experimental periodic rate adjustment mechanism will be evaluated on its ability to eliminate disincentives for acquisition of least-cost power supply and demand-side resources. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-901183-T; UE-901184-P, Third Supplemental Order [decoupling order] (April 1991).

If an incentive program is approved as part of an experimental mechanism for least cost planning, the Commission will consider both rewards for positive behavior and disincentives for negative behavior to be integral parts of the incentive program. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-901183-T; UE-901184-P, Third Supplemental Order [decoupling order] (April 1991).

WAC 480-100-251 (cont.)

The Commission will consider the net income neutrality requirement of the federal Clean Air Act when reviewing a periodic rate adjustment mechanism. 42 U.S.C.A. § 7651c(f)(2)(B)(iv); WAC 480-100-251. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-901183-T; UE-901184-P, Third Supplemental Order [decoupling order] (April 1991).

The filing of a least cost plan by a utility and the acceptance of the least cost plan by the Commission does not constitute a pre-approval of any element of that plan. WAC 480-100-251. WUTC v. Puget Sound Power & Light Co., Docket No. U-88-2010-T, Second Supplemental Order (May 1988).

The Commission has as a goal the development of positive as well as negative incentives to management to provide energy to customers at the least practical life cycle costs and to treat investments in end use efficiency and in new supply on an equal and balanced basis. It may require a company to undertake a least-cost study, and to develop as a part of the plan an analysis of alternative ways of providing energy consistent with the Commission's goal. WAC 480-100-251 (decided before adoption of the rule). WUTC v. Pacific Power & Light Co., Docket No. U-86-02, Second Supplemental Order (September 1986).

The Commission may require a public service company to develop, as part of its least cost service plan, an analysis of alternative ways of providing energy to customers at the least practical life cycle cost and treating investments in end use efficiency and new supply on an equal and balanced basis. The Commission may also require the company to consult with Commission staff in the design of the study and plan and to comply with specific instruction as to content, timing and reporting as specified by letter from the Commission Secretary. RCW 80.28.025; WAC 480-100-251. WUTC v. Puget Sound Power & Light Co., Docket No. U-85-53, Second Supplemental Order [general rate case order] (May 1986).

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NOTE: Additional headnotes concerning Puget Power's PRAM experimental mechanism appear under RCW 80.28.025.

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FORMER CHAPTER 480-105 WAC

ELECTRIC COMPANIES--INTERCONNECTION WITH ELECTRIC COGENERATION AND SMALL POWER PRODUCTION FACILITIES

Repealed effective 8/18/89

The Public Utilities Regulatory Policies Act of 1978 (PURPA) requires the Commission to assure that utilities under its jurisdiction fulfill their obligations to purchase energy and capacity that is made available from a qualifying facility. Chapter 480-105 WAC. In re Wheelabrator Environmental Systems, Inc., Docket No. U-89-3043-F, First Supplemental Order (September 1989).

Under the federal Public Utilities Regulatory Policies Act (PURPA), the Commission's role in reviewing purchases of power from qualifying facilities is to assure that ratepayers are not disadvantaged by the utility company's purchase of power from a qualifying facility. The Commission will not direct the purchaser to contract with a specific supplier merely because that supplier proposes to become a "qualifying facility". Chapter 480-105 WAC. In re Wheelabrator Environmental Systems, Inc., Docket No. U-89-3043-F, First Supplemental Order (September 1989).

The Commission will dismiss the complaint of a qualifying facility (QF) alleging failure by a utility to execute a purported agreement with the QF for the purchase of electric power from the QF when the QF has not submitted a sufficiently mature proposal that would demand an affirmative response by the utility. RCW 80.04.110; Former WAC 480-105-040. Spokane Energy, Inc. v. Washington Water Power Co., Docket No. U-86-114, Order Granting Exceptions and Dismissing Complaint (April 1987).

When some of an electric company's energy resources are purchased from qualifying facilities (QF's), in order to reach the ultimate determination whether rates and charges proposed in a utility's revised tariffs are fair, just, reasonable and sufficient, the Commission must first make an underlying determination whether avoided cost has been calculated properly under federal and state laws. RCW 80.28.020; Former WAC 480-105-050. WUTC v. Washington Water Power Co., Docket No. U-86-119, Second Supplemental Order (April 1987).

When a utility incorrectly calculates its avoided cost for purchases of power from qualifying facilities (QF's), the resulting tariffs are not fair, just, reasonable, and sufficient. RCW 80.28.020; Former WAC 480-105-050. WUTC v. Washington Water Power Co., Docket No. U-86-119, Second Supplemental Order (April 1987).

The Commission has statutory authority to require the submission and approval of contracts related to cogeneration or small power production facilities of one megawatt or more, prior to the validation of such contracts. Former WAC 480-105-005; PURPA. WUTC v. Puget Sound Power & Light

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Co., Docket No. U-85-87, Fourth Supplemental Order (March 1986).

CHAPTER 480-107 WAC

ELECTRIC COMPANIES--PURCHASES OF ELECTRICITY FROM QUALIFYING FACILITIES AND INDEPENDENT POWER PRODUCERS AND PURCHASES OF ELECTRICAL SAVINGS FROM CONSERVATION SUPPLIERS.

The Commission is committed to encouraging conservation, renewable resources, and cogeneration that are cost effective. Chapter 480-107 WAC. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Twentieth Supplemental Order [Prudence] (December 1994).

Under current practice, the proper forum for a Commission review of an electric company's decisions regarding what resources it should build or purchase is a general rate case. RCW 80.28.020 (prudence); Chapter 480-107 WAC. SESCO, Inc. v. Washington Water Power Company, Docket Nos. UE-930616, Order Dismissing Complaint (November 1994).

The Commission's competitive bidding rules establish a framework in which utilities and bidders are to operate with limited Commission involvement. The Commission does not intend to usurp the utility's management function. Nor is the Commission Staff available to any bidder to investigate and take sides on any issue that may arise. Chapter 480-107 WAC. SESCO, Inc. v. Washington Water Power Company, Docket Nos. UE-930616, Order Dismissing Complaint (November 1994).

The Commission's acceptance of a PURPA contract does not preclude it from later reviewing the contract for prudence to determine what amounts will be recovered from ratepayers. RCW 80.28.040; Chapter 480-107 WAC. WUTC v. Puget Sound Power & Light Company, Docket Nos. UE-920433, UE-920499, & **UE-921262** (Consolidated), Nineteenth Supplemental Order [Prudence Order] (September 1994).

The Commission's electric competitive bidding rules must be read together with the Commission-approved request for proposals ("RFP") at issue to determine the evaluation and ranking procedures that the utility is to follow. Chapter 480-107 WAC. SESCO, Inc. v. Pacific Power & Light Company, Docket No. UE-921065, Fifth Supplemental Order (January 1994).

When an electric utility's evaluation of a bid in a competitive bidding procedure under Chapter 480-107 WAC is determined to be unfair or irrational, re-evaluating and re-ranking bids is an appropriate action for the utility to take. Chapter 480-107 WAC. SESCO, Inc. v. Pacific Power & Light Company, Docket No. UE-921065, Fifth Supplemental Order (January 1994).

The Commission's electric competitive bidding rules do not require a utility to fill the resource block established in its request for proposals ("RFP"). Chapter 480-107 WAC. SESCO, Inc. v. Pacific Power & Light Company, Docket No. UE-921065, Fifth Supplemental Order (January 1994).

Chapter 480-107 WAC (cont.)

The Commission's competitive bidding rules establish a framework in which utilities and bidders are to operate, with limited Commission interference. The Commission does not intend to usurp the utility's management function. Nor is the Commission Staff available to any bidder to investigate and take sides on any issue that may arise. Chapter 480-107 WAC. SESCO, Inc. v. Pacific Power & Light Company, Docket No. UE-921065, Fifth Supplemental Order (January 1994).

The Commission will treat as a complaint a petition for adjudicative proceeding filed in a Chapter 480-107 WAC proceeding by an unsuccessful bidder, which does not seek a Commission investigation into the utility's solicitation process, but instead seeks an adjudication of the issues that the bidder raises and asks the Commission to grant the bidder specific relief, and will sever it from the Chapter 480-107 WAC proceeding. In re Washington Water Power Company, Docket No. UE-910452; Sesco, Inc. v. Washington Water Power Company, Docket No. UE-930616 (May 1993).

The Commission will treat as a complaint a petition filed by an unsuccessful bidder in a Chapter 480-107 WAC proceeding involving a utility's least cost plan, which does not seek a Commission investigation into the utility's solicitation process, but instead seeks an adjudication of the issues that the bidder raises and asks the Commission to grant the bidder specific relief, and will sever it from the Chapter 480-107 WAC proceeding. In re Pacificorp d/b/a Pacific Power & Light Company, Docket No. UE-910629; SESCO, Inc. v. Pacific Power & Light, Docket No. UE-921065; Second Supplemental Order (October 1992).

An unsuccessful bidder in an electric company's request for proposals who complains to the Commission and asks that the Commission order the electric company to accept for negotiation the projects the bidder offered in the competitive bidding process and for other relief, has the burden of supporting its case on all counts. Chapter 480-107 WAC. In re Pacificorp d/b/a Pacific Power & Light Company, Docket No. UE-910629; SESCO, Inc. v. Pacific Power & Light, Docket No. UE-921065; Second Supplemental Order (October 1992).

An electric company's draft request for proposals ("RFP") for long-term delivery of power starting on a future date should not preclude bidders from offering resources that come on line prior to that date. Chapter 480-107 WAC. In re Washington Water Power Company, Docket No. UE-910452, First Supplemental Order (October 1991).

An electric company's draft request for proposals ("RFP") for long-term delivery of power should not have restrictive provisions that may unduly limit the number or size of bids, since the primary purpose of the bidding program is to identify a broad range of potential conservation and generating resources. Chapter 480-107 WAC. In re Pacificorp d/b/a Pacific Power & Light Company, Docket No. UE-910629, First Supplemental Order (October 1991).

CHAPTER 480-110 WAC

WATER COMPANIES

WAC 480-110-031 Accounting.

For purposes of rate-making, the Commission may require a utility to maintain time records showing the actual time and nature of work performed by all persons seeking compensation for work performed; in the absence of complete records, the Commission may disallow all compensation claimed. RCW 80.28.020; WAC 480-110-031. WUTC v. Harbor Water Co., Docket No. U-87-1054-T, Third Supplemental Order (May 1988).

A water company's expenditure for interior cleaning and painting of a water tower constitutes a capital expense when there is no engineering evidence that the expense could have been prevented by improved regular maintenance. RCW 80.04.250; RCW 80.28.020; WAC 480-110-031. WUTC v. Pacific Beach Water, Inc., Docket No. U-86-57, Order on Review (February 1987).

WAC 480-110-041 Availability of information.

The Commission will consider on a case by case basis whether shorter office hours than those required by WAC 480-110-041 are appropriate for a particular small water company, balancing the benefit to customers of standard office hours against the financial burden of maintaining standard hours and the availability of other reasonable means of customer access to the company. WAC 480-110-041. WUTC v. Alderton-McMillin Water Supply, Inc., Docket No. UW-911041, Fourth Supplemental Order (October 1992).

CHAPTER 480-120 WAC

TELEPHONE COMPANIES

WAC 480-120-011 Application of rules.

The Commission has the discretionary authority under WAC 480-120-011 to grant waivers of WAC 480-120-138's requirement that pay telephones be either credit only or coin and credit, during all hours. In deciding whether to waive the rule's prohibition of restricting pay telephones against coin use during certain hours, the Commission will consider the factors set out in its Policy Statement issued October 6, 1994. In re U S WEST Communications, Inc., Docket No. UT-931491 (October 1994).

WAC 480-120-021 Glossary.

Cross References

- RCW 80.36.320 - Classification as competitive telecommunications companies, services.

The Commission will deny an Alternate Operator Services Company's petition for competitive classification which fails to demonstrate that the company's end-user consumers have reasonably available alternatives and that the company does not have a significant captive customer base at the location of the instrument. RCW 80.36.320; 80.36.520; WAC 480-120-021; 480-120-141. In re Paytel Northwest, Inc., Docket No. UT-920632, Fourth Supplemental Order as corrected by Fifth Supplemental Order (October 1993).

The Commission will deny an Alternate Operator Services Company's petition for competitive classification which fails to demonstrate that the company's end-user consumers have reasonably available alternatives and that the company does not have a significant captive customer base at the location of the instrument. RCW 80.36.320; 80.36.520; WAC 480-120-021; 480-120-141. In re International Pacific, Inc., Docket No. UT-920546, Fifth Supplemental Order (September 1993).

WAC 480-120-022 Classification proceedings.

Cross References

- Competitive telecommunications companies: See RCW 80.36.310-.330.

WAC 480-120-023 Content of petition for classification of competitive telecommunications services and companies.

Cross References

- Competitive telecommunications companies: See RCW 80.36.310-.330.

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WAC 480-120-024

Waivers of Commission substantive regulations are not permitted for services classified as competitive under RCW 80.36.330. Waivers are only permitted for competitive companies, duly classified as such pursuant to RCW 80.36.320. RCW 80.36.320; RCW 80.36.330; WAC 480-120-024. In re Enhanced Telemanagement, Inc., Docket No. U-86-59, First Supplemental Order (December 1986).

The Commission may revoke a waiver of regulations if the revocation would protect the public interest. RCW 80.36.320; WAC 480-120-024. In re Enhanced Telemanagement, Inc., Docket No. U-86-59, First Supplemental Order (December 1986).

The Commission may require a competitive telecommunications company to submit to reasonable reporting procedures. The Commission also may require the submission of informational reports regarding any area of the Commission's authorized jurisdiction, whether or not specific regulations relating to that area have been waived as to the particular company. RCW 80.36.320; WAC 480-120-024. In re Enhanced Telemanagement, Inc., Docket No. U-86-59, First Supplemental Order (December 1986).

Consistent with the policy goals of the Regulatory Flexibility Act, in regulating competitive telecommunications companies the Commission will waive most Commission securities, affiliated interest and transfer of property requirements. However, in areas where there remains substantial public interest in protecting consumers, such as customer deposits and disconnection of service, the Commission will not waive its rules. RCW 80.36.320; WAC 480-120-024; 480-120-056; 480-120-081. In re Spokane Telco., Inc., et al., Docket Nos. U-85-93, U-86-60; U-86-64 to U-86-78; U-86-81; U-86-82; Order on Classification (September 1986); In re U.S. Sprint Communications Co., Docket No. U-86-79; In re MCI Telecommunications Corporation, Docket No. U-86-101, Order Granting Petitions In Part (September 1986).

The Commission may grant a competitive telecommunications company's request for waiver of certain statutes or administrative rules. The Commission generally will require the company to adhere to the provisions of WAC 480-120-056 relating to customer deposits. RCW 80.36.320; WAC 480-120-024; 480-120-056. In re Allnet Communications Services, Inc., Docket No. U-85-75, Order Granting Petition in Part [and providing guidelines for future classification proceedings] (March 1986).

WAC 480-120-025 Investigations.

In a competitive telecommunications service reclassification proceeding under RCW 80.36.330, the burden of proof is on the company offering the service to demonstrate that the existing classification is proper and consistent with the public interest. RCW 80.36.330; WAC 480-120-025(2). WUTC v. U S WEST Communications, Inc., Docket Nos. UT-911488, UT-911490, & UT-920252

(Consolidated), Fourth Supplemental Order (November 1993).

WAC 480-120-026 Tariffs.

Cross References

- Rate setting by Commission: See RCW 80.36.140.

The Commission will reject a company's tariff filing to implement extended area service (EAS) when the costs are above those it is realistic to expect ratepayers to pay; prohibitively high rates would be inconsistent with the state's statutory goal of universal service. RCW 80.36.300; 80.36.855; WAC 480-120-400. WUTC v. Toledo Telephone Company, Inc., Docket No. UT-921259, Fourth Supplemental Order (September 1993).

Tariffs need not include specific language to authorize corrections due to reporting errors because law requires those corrections. RCW 80.36.130; WAC 480-120-026. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a Amnet, Docket No. U-86-43, Seventh Supplemental Order (March 1988).

WAC 480-120-027 Price lists.

A competitive telecommunications company's price list is effective after ten days' notice to the Commission and customers. RCW 80.36.320; WAC 480-120-027. In re STS Communications, Inc., Docket No. U-87-1046-P, Order Granting Petition (August 1987).

The Commission will authorize a telecommunications company that it has found to be competitive to file price lists instead of tariffs. RCW 80.36.320; WAC 480-120-027 (decided before adoption of rule). In re Spokane Telco., Inc., et al., Docket Nos. U-85-93, U-86-60; U-86-64 to U-86-78; U-86-81; U-86-82; Order on Classification (September 1986); In re U.S. Sprint Communications Co., Docket No. U-86-79; In re MCI Telecommunications Corporation, Docket No. U-86-101, Order Granting Petitions In Part (September 1986).

In authorizing a competitive telecommunications company to file price lists instead of tariffs, the Commission requires that the company's price lists must contain sufficient detail to ensure that customers and the Commission understand exactly the nature of service offered and the charges for that service; that the company make its price lists available for inspection by persons requesting to see them; that the company establish a procedure to make the terms and conditions of service available to customers; and that the company give its customers advance notice of price changes either in the billing cycle or by separate mailing. RCW 80.36.330; WAC 480-120-027 (decided before adoption of rule). In re Spokane Telco., Inc., et al., Docket Nos. U-85-93, U-86-60; U-86-64 to U-86-78; U-86-81; U-86-82; Order on Classification (September 1986); In re U.S. Sprint Communications Co., Docket No. U-86-79; In re MCI Telecommunications Corporation, Docket No. U-86-101, Order Granting Petitions In Part (September 1986).

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WAC 480-120-027 (cont.)

The intent of the Regulatory Flexibility Act, Chapter 450, Laws 1985, can best be accomplished by requiring a competitive telecommunications company to file price lists, not tariffs, with the Commission. Once classified as competitive, a telecommunications company should no longer use tariff regulations as a shield. RCW 80.36.320; WAC 480-120-027. In re Allnet Communications Services, Inc., Docket No. U-85-75, Order Granting Petition in Part [and providing guidelines for future classification proceedings] (March 1986).

A competitive telecommunications company's price lists must contain sufficient detail to ensure that customers and the Commission understand exactly the nature of service offered and the charges for the service. RCW 80.36.320; WAC 480-120-027. In re Allnet Communications Services, Inc., Docket No. U-85-75, Order Granting Petition in Part [and providing guidelines for future classification proceedings] (March 1986).

A competitive telecommunications company must make its price lists available for inspection by persons requesting to see them. RCW 80.36.320; WAC 480-120-027. In re Allnet Communications Services, Inc., Docket No. U-85-75, Order Granting Petition in Part [and providing guidelines for future classification proceedings] (March 1986).

WAC 480-120-031 Accounting.

A Commission order accepting a settlement agreement stipulating the approval of affiliated interest agreements, as being in the best interest of the ratepayers and the companies, does not necessarily constitute Commission approval of rates set forth in the settlement agreement. RCW 34.05.060; 80.28.020; WAC 480-09-465; WAC 480-120-031. In re GTE Northwest Incorporated and Contel of the Northwest, Inc., Docket No. UT-910499, Second Supplemental Order (September 1992).

The Commission will approve a telephone company's plan for deregulating embedded customer premises equipment that is in general conformity with the Commission's order. RCW 80.04.250; WAC 480-120-031. In re Procedures to Implement Detariffing of Embedded Customer Premises Equipment Owned by Independent Telephone Companies (Whidbey Telephone Co.), Docket No. U-85-38, Eighteenth Supplemental Order (December 1987); (Inland Telephone Co.), Docket No. U-85-38, Nineteenth Supplemental Order (December 1987); (Pacific Telecom), Docket No. U-85-38, Twentieth Supplemental Order (December 1987); (General Telephone Co. of the Northwest), Docket No. U-85-38, Twenty-first Supplemental Order (December 1987).

WAC 480-120-036 Finance--Securities, affiliated interests, transfer of property.

Cross references

- Affiliated interests: See Chapter 81.16 RCW

WAC 480-120-041

The Commission may require a telecommunications company contemplating termination of maintenance of leased customer premises equipment (CPE) to provide customers with a written notice disclosing fully that CPE maintenance will not continue and repairs will not be made so that customers can make an informed decision as to whether to continue leasing CPE. WAC 480-120-041. WUTC v. Continental Telephone Co. of the Northwest, Inc., Docket No. U-85-32, Second Supplemental Order (April 1986).

WAC 480-120-042 Directory service.

A telephone company tariff allowing public safety agency access to database information about non-published numbers only when a call is placed to an emergency number would not allow reverse line inquiry access regarding the non-published number in the absence of an emergency call from the non-published number. RCW 80.36.090; WAC 480-120-042. In re U S WEST Communications, Inc., Docket No. UT-910785, Declaratory Order (October 1991).

The Commission protects the expectations of subscribers to non-published directory service by prohibiting the release of non-published information except to law enforcement personnel and similar public safety and emergency services providers. The information may not be released to enhanced and information service providers merely to expedite billing to and collection from their customers. WAC 480-120-042. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-88-2149-T, Second Supplemental Order (March 1989).

It is good public policy to inform customers fully of their rights and responsibilities; the subscriber to non-published service should be made aware of the customer's right to have one telephone number change and a refund of charges accrued during the time a non-published number was improperly disclosed. WAC 480-120-042. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-88-2149-T, Second Supplemental Order (March 1989).

WAC 480-120-056 Deposits.

A non-residential telecommunications customer that is delinquent is not reasonably entitled to additional service until it demonstrates satisfactory credit. RCW 80.36.090; WAC 480-120-056(1). Professional Business Services, Inc. v. U S WEST Communications, Docket No. UT-900162, Order Denying Complaint (April 1991).

Consistent with the policy goals of the Regulatory Flexibility Act, in regulating competitive telecommunications companies the Commission will waive most Commission securities, affiliated

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interest and transfer of property requirements. However, in areas where there remains substantial public interest in protecting consumers, such as customer deposits and disconnection of service, the Commission will not waive its rules. RCW 80.36.320; WAC 480-120-024; 480-120-056; 480-120-081. In re Spokane Telco., Inc., et al., Docket Nos. U-85-93, U-86-60; U-86-64 to U-86-78; U-86-81; U-86-82; Order on Classification (September 1986); In re U.S. Sprint Communications Co., Docket No. U-86-79; In re MCI Telecommunications Corporation, Docket No. U-86-101, Order Granting Petitions In Part (September 1986).

The Commission may grant a competitive telecommunications company's request for waiver of certain statutes or administrative rules. The Commission generally will require the company to adhere to the provisions of WAC 480-120-056 relating to customer deposits. RCW 80.36.320; WAC 480-120-024; 480-120-056. In re Allnet Communications Services, Inc., Docket No. U-85-75, Order Granting Petition in Part [and providing guidelines for future classification proceedings] (March 1986).

WAC 480-120-061 Refusal of service.

When a non-residential customer is chronically overdue in paying its bills, a telecommunications company may demand a deposit and impose a service freeze. WAC 480-120-056(1) and (3)(a)(i); 480-120-061. Professional Business Services, Inc. v. U S WEST Communications, Docket No. UT-900162, Order Denying Complaint (April 1991).

WAC 480-120-081 Discontinuance of service.

A telecommunications company's use of a programmed automatic dialing device to attempt contact with accounts subject to disconnection of service, when the device is programmed to call only those accounts that fall within the company's notification requirements, does not violate the provisions of WAC 480-120-088 governing the use of automatic dialing devices. WAC 480-120-088; 480-120-081. In re U S WEST Communications, Docket No. UT-920798, Declaratory Order (October 1992).

The Commission does not have jurisdiction to award money damages. but does have jurisdiction to assess a penalty against a telecommunications company in the event of a wrongful disconnect. RCW 80.04.405; WAC 480-120-081. Sharad M. Bhatnagar v. U S WEST Communications, Docket No. UT-900603, Second Supplemental Order (June 1991).

Legal holidays are not included in the term "business days" as used in WAC 480-120-081(4)(b), which requires eight business days' prior notice of disconnection. WAC 480-120-081. Boatracng Magazine v. GTE Northwest Incorporated, Docket No. U-89-3464-F (February 1991).

Consistent with the policy goals of the Regulatory Flexibility Act, in regulating competitive telecommunications companies the Commission will waive most Commission securities, affiliated interest and transfer of property requirements. However, in areas where there remains substantial

public interest in protecting consumers, such as customer deposits and disconnection of service, the Commission will not waive its rules. RCW 80.36.320; WAC 480-120-024; 480-120-056; 480-120-081. In re Spokane Telco., Inc., et al., Docket Nos. U-85-93, U-86-60; U-86-64 to U-86-78; U-86-81; U-86-82; Order on Classification (September 1986); In re U.S. Sprint Communications Co., Docket No. U-86-79; In re MCI Telecommunications Corporation, Docket No. U-86-101, Order Granting Petitions In Part (September 1986).

WAC 480-120-088 Automatic dialing-announcing devices.

A telecommunications company's use of a programmed automatic dialing device to attempt contact with accounts subject to disconnection of service, when the device is programmed to call only those accounts that fall within the company's notification requirements, does not violate the provisions of WAC 480-120-088 governing the use of automatic dialing devices. WAC 480-120-088; 480-120-081. In re U S WEST Communications, Docket No. UT-920798, Declaratory Order (October 1992).

WAC 480-120-089 Information delivery services.

Constitutional and traditional notions of privacy affect the Commission's decisions on all telecommunications services, regardless of whether subscribers have non-published numbers. Each local exchange subscriber must have the opportunity to block unwarranted access offered through the local exchange company. RCW 80.36.500; WAC 480-120-089. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-88-2149-T, Second Supplemental Order (March 1989).

WAC 480-120-101 Complaints and disputes.

WAC 480-120-101(3) requires a telephone company to assure that every supervisor or group of supervisors contacted by a dissatisfied subscriber or applicant for service shall tell the person that the Commission is available for dispute resolution assistance if the person is not fully satisfied as a result of the discussion. WAC 480-120-101. Boatracing Magazine v. GTE Northwest Incorporated, Docket No. U-89-3464-F (February 1991).

In a billing dispute, failure of the local dominant toll carrier for intraLATA traffic to provide a correct and timely local calling area report to an interexchange carrier does not excuse the interexchange carrier's failure to make payments to the dominant carrier; withholding of payment violates the requirement under RCW 80.36.130 that the full tariff be billed and paid for services rendered. RCW 80.04.110; RCW 80.36.130; WAC 480-120-101. Pacific Northwest Bell Telephone Co. v. American Network, Inc., d/b/a Amnet, Docket No. U-86-43, Seventh Supplemental Order (March 1988).

WAC 480-120-106 Form of bills.

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The Commission will dismiss, after hearing, a customer's complaint alleging overbilling by a utility when the evidence shows that the customer's allegations are incorrect and that the utility's calculation of charges owed is correct. RCW 80.04.110; RCW 80.36.080; WAC 480-120-106. Abode Realty v. Telephone Utilities of Washington, Docket No. U-86-116, Order Affirming Proposed Order and Dismissing Complaint (December 1987).

The Commission will require adequate justification before it authorizes use of contracts for billing and collection rather than tariffs. RCW 80.36.140; WAC 480-120-106. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-23 et al., Eighteenth Supplemental Order (December 1986).

WAC 480-120-138 Pay telephones--Local and intrastate.

The Commission has the discretionary authority under WAC 480-120-011 to grant waivers of WAC 480-120-138's requirement that pay telephones be either credit only or coin and credit, during all hours. In deciding whether to waive the rule's prohibition of restricting pay telephones against coin use during certain hours, the Commission will consider the factors set out in its Policy Statement issued October 6, 1994. In re U S WEST Communications, Inc., Docket No. UT-931491 (October 1994).

Policy Statement: The Commission establishes criteria that it will consider when deciding whether to grant discretionary waivers of WAC 480-120-138 to allow the restriction of pay telephones against coin use during certain hours. In re Pay Telephone Call Restriction, Docket No. UT-940171, Policy Statement (October 1994).

WAC 480-120-138 does not allow coin operated payphones to accept coins less than twenty-four hours each day, nor does it allow a single payphone that offers both coin and credit service to be restricted against coin use during certain hours. In re U S WEST Communications, Inc., Docket No. UT-930430 (June 1993).

The local exchange company pay telephone exemption contained in WAC 480-120-138(9) applies only to the requirements of that subsection, and not to the requirements of other parts of the section. In re U S WEST Communications, Inc., Docket No. UT-930430 (June 1993).

The Commission may prohibit a telephone company from changing the telephone numbers of coin operated telephones that are being converted from company-owned to customer-owned phones. WAC 480-120-138. WUTC v. Pacific Northwest Bell Telephone Co., Docket No. U-85-91, Fifth Supplemental Order (October 1986).

WAC 480-120-141 Alternate operator services.

WAC 480-120-141 puts alternate operator service providers on notice that they are responsible for the circumstances affecting the public's access to their services and that they must take all steps

necessary to ensure compliance with the rule's provisions. WUTC v. International Pacific, Inc., Docket No. UT-921340, Second Supplemental Order (November 1993).

An alternate operator service provider has the right and the power, through its ability to contract with the unregulated aggregators who provide the means for the public to access AOS services, to contract for compliance with the Commission's rules and for authority to take reasonable steps to assure compliance. It also has the power to take other, non-contracted, reasonable steps to assure compliance. RCW 80.36.520; 80.36.524; WAC 480-120-141. WUTC v. International Pacific, Inc., Docket No. UT-921340, Second Supplemental Order (November 1993).

The purpose of WAC 480-120-141 is to secure compliance with the Commission's alternate operator service rules by reasonable efforts. WUTC v. International Pacific, Inc., Docket No. UT-921340, Second Supplemental Order (November 1993).

WAC 480-120-141 (cont.)

WAC 480-120-141 imposes strict liability by its terms, and the Commission has no discretion, upon a finding in a proper proceeding that violations occurred, to avoid making a penalty assessment. It does, however, have the discretion to determine whether to bring a proceeding and if brought, whether to mitigate the penalty. WUTC v. International Pacific, Inc., Docket No. UT-921340, Second Supplemental Order (November 1993).

The Commission will deny an Alternate Operator Services Company's petition for competitive classification that fails to demonstrate that the company's end-user consumers have reasonably available alternatives and that the company does not have a significant captive customer base at the location of the instrument. RCW 80.36.320; 80.36.520; WAC 480-120-021; 480-120-141. In re Paytel Northwest, Inc., Docket No. UT-920632, Fourth Supplemental Order as corrected by Fifth Supplemental Order (October 1993).

In reviewing operator services that are available only as alternate operator services, the relevant geographic market for an instrument that is presubscribed to the services of an Alternate Operator Services Company is the instrument from which the consumer receives operator services, and the relevant product market is operator-assisted telephone calls. RCW 80.36.320; 80.36.520; WAC 480-120-141. In re Paytel Northwest, Inc., Docket No. UT-920632, Fourth Supplemental Order as corrected by Fifth Supplemental Order (October 1993).

Tariffs for alternate operator service that contain multiple levels from which call aggregators may choose the actual rate that the AOS company will charge consumers of its services are improper if they do not meet the exceptions set out in WAC 480-120-141(1)(c), and may constitute an unreasonable preference or rate discrimination prohibited under RCW 80.36.170 or 180. In re Paytel Northwest, Inc., Docket No. UT-920632, Fourth Supplemental Order as corrected by Fifth Supplemental Order (October 1993).

The Commission will deny an Alternate Operator Services Company's petition for competitive classification which fails to demonstrate that the company's end-user consumers have reasonably

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available alternatives and that the company does not have a significant captive customer base at the location of the instrument. RCW 80.36.320; 80.36.520; WAC 480-120-021; 480-120-141. In re International Pacific, Inc., Docket No. UT-920546, Fifth Supplemental Order (September 1993).

In reviewing operator services that are available only as alternate operator services, the relevant geographic market for an instrument that is presubscribed to the services of an Alternate Operator Services Company is the immediate environs of the instrument, and the relevant product market is operator-assisted telephone calls. RCW 80.36.320; 80.36.520; WAC 480-120-141. In re International Pacific, Inc., Docket No. UT-920546, Fifth Supplemental Order (September 1993).

The Commission may waive the requirement that Alternate Operator Services companies brand calls using their name, as registered with the Commission, only to the extent of authorizing deletion of terms that are not necessary to clear consumer identification of the service provider. WAC 480-120-141(5)(a)(ii). In re Payline Systems, Inc., Commission Letter Denying Waiver (November 1991).

WAC 480-120-141 (cont.)

Petitions for classification as competitive telecommunications companies should be denied when the petitioners have failed to identify, describe and analyze the relevant geographic market, and failed to demonstrate that effective competition exists. In the absence of full information, granting pricing flexibility to AOS firms would pose risks of capturing and exploiting end-users. RCW 80.36.310; WAC 480-120-021; WAC 480-120-141. Consolidated cases: International Pacific, Inc., Docket No. U-89-2603-P; American Operator Services, Inc., Docket No. U-89-2740-P; Central Corporation, Docket No. U-89-2741-P; Payline Systems, Inc., Docket No. U-89-2742-P; NTS-Idaho, Inc., d/b/a National Networks, Docket No. U-89-2743-P; International Telecharge, Inc., Docket No. U-89-2744-P, Second Supplemental Order (July 1990).

The Commission will deny an Alternate Operator Services Company's petition for competitive classification which fails to demonstrate that the company's end-user consumers have reasonably available alternatives and that the company does not have a significant captive customer base at the location of the instrument. RCW 80.36.320; WAC 480-120-141. In re Teleconnect Long Distance Services & Systems Co. d/b/a Telecom USA Long Distance Co., Docket No. U-89-3219-P, Second Supplemental Order (July 1990).

WAC 480-120-400 Purpose.

The Commission will reject a company's tariff filing to implement extended area service (EAS) when the costs are above those it is realistic to expect ratepayers to pay; prohibitively high rates would be inconsistent with the state's statutory goal of universal service. RCW 80.36.300; 80.36.855; WAC 480-120-400. WUTC v. Toledo Telephone Company, Inc., Docket No. UT-921259, Fourth Supplemental Order (September 1993).

WAC 480-120-405 Definition of extended area service.

Approval of a tariff filing's proposed extended area service (EAS) routes without a rate schedule

would violate RCW 80.36.100 and WAC 480-120-026, and would be in conflict with the Commission's EAS rule, WAC 480-120-405. WUTC v. Toledo Telephone Company, Inc., Docket No. UT-921259, Fourth Supplemental Order (September 1993).

WAC 480-120-410 Local calling capability.

The 80% local calling capability criterion in WAC 480-120-410 is a screening tool, intended to act as a threshold indicator to identify the universe of potential routes that companies should initially examine for extended area service. It is neither a goal nor a guarantee that an EAS route will be implemented. In re Washington Independent Telephone Association and U S WEST Communications, Inc., Docket No. UT-911288, First Supplemental Order (June 1992).

The Commission staff may properly develop extended area service evaluation criteria that are not specifically included in the EAS rules. WAC 480-120-410. In re Washington Independent Telephone Association and U S WEST Communications, Inc., Docket No. UT-911288, First Supplemental Order (June 1992).

WAC 480-120-415 Determination of extended area service routes.

WAC 480-120-415(6), an extended area service ("EAS") rule, does not require that a company submit its engineering cost studies separately from other cost estimates of implementing new EAS routes; it is not inconsistent with the rule for the Commission to order companies to submit with their engineering study for each route, the engineering costs and all other relevant costs of converting to EAS. WAC 480-120-415(6). In re Washington Independent Telephone Association and U S WEST Communications, Inc., Docket No. UT-911288, Second Supplemental Order (August 1992).

The purpose of the extended area service ("EAS") rule, WAC 480-120-415, is to ensure that consumers have adequate local calling areas for reaching basic services. In re Washington Independent Telephone Association and U S WEST Communications, Inc., Docket No. UT-911288, First Supplemental Order (June 1992).

When a community's local calling area is divided by several separate exchanges, each having its own calling privileges, the Commission may order that a new exchange with Extended Area Service (EAS) be established in the area with rates equivalent to those currently in effect, plus an EAS service charge, so that area subscribers will be able to call each other without paying a toll charge. RCW 80.04.130; WAC 480-120-415. WUTC v. General Telephone Co. of the Northwest, Docket No. U-87-1603-T, Second Supplemental Order (November 1988).

CHAPTER 480-121 WAC

REGISTRATION OF TELECOMMUNICATIONS COMPANIES

WAC 480-121-040 Grant or denial of registration.

Cross References

- RCW 80.36.350 - Registration of new companies.

The "public interest" factor in the telecommunications registration rule, WAC 480-121-040, cannot be used as a vehicle for applying the general policies enunciated in RCW 80.36.300 to deny a registration. The only "public interest" basis for denying a registration application would be that the proposed service did not satisfy the requirements of the registration statute, or that it violated applicable public service laws. Consistency with general statutory policy factors is not relevant to such a determination. RCW 80.36.300; 80.36.350; WAC 480-121-040. In re Electric Lightwave, Inc., Docket No. UT-901029, Fifth Supplemental Order (April 1993); In re Digital Direct of Seattle, Inc., Docket Nos. UT-910776 & UT-910777, Fifth Supplemental Order (April 1993).

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COMMISSION GENERAL--BUDGETS

Cross References

- Commission's control over expenditures: See RCW 80.04.300-.310.
- Rate setting by Commission: See RCW 80.28.020 (gas/electric/water).
- Rate setting by Commission: See RCW 80.36.140 (telecommunications).
- Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.

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COMMISSION GENERAL--TRANSFERS OF PROPERTY

Prior Commission authorization is required in order for a public service company, directly or indirectly, to purchase, acquire, or become the owner of any of the franchises, properties, facilities, capital stocks or bonds of any other public service company. RCW 80.12.040; WAC 480-143-010. In re Pacificorp, Docket No. U-87-1338-AT, Second Supplemental Order (July 1988).

The Commission will deny an application to transfer property when the proposed transfer is not consistent with the public interest. RCW 80.12.030; WAC 480-143-050. In re Puget Sound Power & Light Co., Docket No. U-86-131, Order Denying Proposed Assignment [of BPA credits] (June 1987).

Any sale or assignment of property made without Commission authority is void. RCW 80.12.030; WAC 480-143-050. In re Puget Sound Power & Light Co., Docket No. U-86-131, Order Denying Proposed Assignment [of BPA credits] (June 1987).

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"P"

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